

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.S-1246-SB of 2016 (O&M)
Date of Decision: November 18, 2016

Rachhpal Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Paras Talwar, Advocate
for the appellant.

Mr.Deepak Garg, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 23.12.2015 passed by learned Judge, Special Court, Patiala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month and 15 days under Section 18 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Patiala, are as under:-

“2. As set up by the prosecution, on 03.09.2013, ASI Gurnam Singh along with HC Manpreet Singh, HC Harjinder Singh and other police officials was present at the canal bridge of

village Mandoli in connection with patrolling and checking of bad elements. In the meantime, one Sikh gentleman came from the side of village Sultanpur on a motor cycle. One plastic carry bag was lying on the right side of handle of the motor cycle. On seeing the police party, the said person tried to turn back his motor cycle. On the basis of suspicion, the said person was apprehended by the Investigation Officer. The Investigating officer verified his identity, who disclosed his name as Rachhpal Singh @ Pali son of Sant Singh resident of village Naneola, P.S. Nagal, District Ambala. Thereafter, the Investigating Officer disclosed his identity to the accused and told him that he suspects some contraband in his possession or in the carry bag lying on the motor cycle and that he wants to conduct his search and that of the carry bag. He also apprised the accused about his legal right to be searched in the presence of a Gazetted Officer or a Magistrate, who can be called at the spot, but, the accused reposed confidence in the Investigating Officer. A consent memo of the accused was prepared, which was signed by accused and attested by HC Manpreet Singh and HC Harjinder Singh. As a result of search of the carry bag lying on the handle of the motor cycle bearing registration No. PB-11-BA-9484, opium wrapped in a glazed paper was recovered. Two samples of 10 grams each were taken out from the recovered opium and the remaining opium on weighment came out to be 480 grams. The samples and remaining opium were sealed by the Investigating Officer in separate parcels with his seal bearing impression 'GS'. Specimen seal was separately prepared and the seal after its use was handed over to HC Manpreet Singh. The case property was taken into police possession vide a recovery memo attested by the above said witnesses. The motor cycle along with its RC was also taken into police possession vide a separate memo. A ruqa was sent by the Investigating Officer to P.S. Kheri Gandiann and on the basis of the same, a formal FIR was recorded by SI Baldev Singh. Rough site plan of the place of recovery was prepared. The accused was arrested and grounds of arrest were conveyed to him. On personal search of the accused, currency notes worth 750/- and one mobile phone were recovered, ₹ which were taken into police possession vide a separate memo. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Cr.P.C. He also sent the report U/s 57 of the NDPS Act. On return to the police station, the entire case property along with the accused, articles of jamatalashi and the witnesses were produced before ASI Tej Singh, who was the officiating SHO of P.S. Kheri Gandian at that time. ASI Tej Singh verified the facts of the case from the accused and the witnesses and affixed his seal bearing impression 'TS' on the case property as well as on the specimen seal chit. Thereafter, the officiating SHO deposited the case property with MHC Lakhwinder Singh. On the next day i.e. 04.09.2013, the officiating SHO

prepared the inventory and application for judicial remand of the accused and handed over the same to the Investigating Officer. The Investigating Officer collected the case property from the MHC and produced the accused in the court of Ld. JMIC, Rajpura. The Ld. Magistrate compared the case property with the inventory and also found the seals intact. The Ld. Magistrate withdrew one representative sample of 10 grams from the bulk parcel and then sealed the representative sample parcel and the bulk parcel with seal bearing impression 'DK' and passed the requisite orders. The Investigating Officer deposited the case property in the Judicial Malkhana, Patiala and produced one sample parcel along with receipt issued by the official of the Judicial Malkhana before MHC Lakhwinder Singh on return to the police station. The sample was sent to the office of Chemical Examiner, Punjab, Kharar and on receipt of report of said Laboratory and completion of the investigation and other necessary formalities, the challan against the accused was prepared and presented in the Court.”

After necessary investigation, challan was presented against the accused-appellant. On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Tej Singh, PW-2 Constable Gurjinder Singh, PW-3 Rajo Bai, Junior Assistant of DTO office, PW-4 MHC Lakhwinder Singh, PW-5 Head Constable Manpreet Singh and PW-6 ASI Gurnam, Singh, Investigating Officer.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and has been falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 500 grams of opium has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is first offender and only bread earner of the family. He further contended that accused-appellant has already undergone 5 months 14 days of actual sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 23.12.2015 passed by learned Judge, Special Court, Patiala, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, only

bread earner of the family and is suffering from long protracted criminal proceedings since 2013 and further in view of the fact that appellant has already undergone actual sentence of 5 months and 14 days out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 500 grams of opium, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Rachhpal Singh, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

November 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No