

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

Crl. Appeal No.S-1525-SB of 2016 (O&M)
Date of Decision: September 01, 2016

Raman Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ranjit Saini, Advocate
for the appellant.

Mr.Vikas Chopra, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana challenging the judgment of conviction dated 12.04.2016 and order of sentence dated 16.04.2016 passed by learned Addl. Sessions Judge, Panipat, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Panipat, are as under:-

“2. Briefly the prosecution case is that on 22.3.2014 SI Har Narain alongwith ASI Surender Singh, ASI Dharambir and Constable Deepak Kumar was present at Railway Road turn

G.T.Road, Panipat in connection with patrolling and crime checking duty. In the meantime, a young boy was seen coming from the side of Railway Station and he was having a plastic bag. On seeing the police party ahead, he turned back and started walking briskly. On suspicion, he was apprehended by SI with the help of other police officials. He disclosed his name as Raman Kumar son of Amar Singh resident of Phal Sanda Police Station Babain District Kurukshetra. A notice under section 50 of the NDPS Act was served upon the accused appraising him of his legal right of search to be effected in the presence of a gazetted officer or a Magistrate. The notice was read over and explained to the accused which was signed by him. He submitted reply to the notice stating that he had full faith upon the SI and that he did not want to get himself personally searched in the presence of a gazetted officer or a Magistrate. On checking of plastic bag, poppy straw was found. The accused could not produce any license or permit for keeping the narcotic substance in his possession. On weighing with computerized weighing machine, the weight of the narcotic substance was found to be 14 kilograms. Two samples of 100 grams each were separated and the same were converted into parcels sealed with seal 'HN'. The remaining case property weighing 13 kilograms and 800 grams was also put in the same plastic bag and sealed with seal 'HN'. The seal after use was handed over to ASI Surender Singh. All the parcels alongwith impression seal were taken into possession by the Investigating Officer vide separate recovery memo. An information was sent to the police station whereupon FIR under Section 15 of the NDPS Act was registered. Initial investigation was conducted by SI Har Narayan. Accused was arrested. Accused alongwith the sample parcels and the case property was produced before the learned Judicial Magistrate Ist Class, Panipat (Duty Magistrate) on 23.3.2014. An application under Section 52-A of the NDPS Act was filed alongwith the inventory. The photograph of the case property was also taken. The learned Duty Magistrate verified the case property and after satisfying herself that the seals on it were intact, attested the inventory. The sealed sample parcels were deposited with MHC. One of the sealed sample parcels was sent to FSL, Madhuban for its chemical examination. The statements of witnesses were recorded under Section 161 Cr.P.C. On completion of investigation, report under Section 173 Cr.P.C. was filed in Court for trial of the accused."

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 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Har Narayan, Investigating Officer, PW-2 Constable Parmod Kumar, PW-3 ASI Surender Singh, PW-4 Vikram Singh, Reader to Naib Tehsildar, PW-5 Deepak Jindal, Ahlmad, PW-6 Surender Rathee, Photographer, PW-7 SI Mahavir Singh, PW-8 EHC Gulzar Singh and PW-9 ASI Jasmer Singh.

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.

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 argued mainly on one point that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed. In the alternative, learned counsel for the appellant, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. Link evidence is complete. He further argued that all the mandatory provisions of the NDPS Act have been complied with. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as

learned State counsel and after going through the record, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. No defence evidence has been produced by the accused. The police party was on patrolling duty and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 12.04.2016 passed by learned Addl. Sessions Judge, Panipat, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant is first offender, only bread earner of the family. Learned counsel for the appellant contended that 14 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity and the appellant has already undergone actual sentence of more than five months. He further

contended that the appellant is suffering from criminal proceedings since

2014.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is poor person, only bread earner of the family and further in view of the fact that appellant has already undergone actual sentence of more than five months out of the total sentence and the appellant is suffering from criminal proceedings since 2014 i.e. for the last two years, and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 14 kgs. of poppy husk, 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. Fine has already been paid, as argued.

Accordingly, present criminal appeal stands partly allowed.

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

September 01, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No