

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

Crl. Appeal No.S-1825-SB of 2016 (O&M)

Date of Decision: October 22, 2016

Kulwant Singh @ Kanta

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mandeep Kumar Dhot, Advocate
for the appellant.

Mr.Varun Sharma, 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 dated 02.05.2016 and order of sentence dated 03.05.2016 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 15(b) of the NDPS Act.

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

report under section 173 of Cr.P.C are that on 5.6.2013, ASI Pritam Singh alongwith other police officials were on patrolling in connection with checking of bad elements. When the police party reached about one kilometer ahead in the area of village Kohrian, It was about 7.10 A.M one person was seeing coming from Harigarh side carrying a plastic thaila upon his head, who became perplexed on seeing the police party and turned back at once. On suspicion, he was apprehended by the Investigation officer with the help of other police party and on inquiry, he disclosed his name as Kulwant Singh alias Kanta son of Gurbax Singh resident of village Kohiran. I.O disclosed his identity to the accused and told him that he suspects some intoxicant substance in the plastic bag carried by the accused on his head and he wants to conduct his search and search of his plastic bag carried by him. He also apprised the accused of his legal rights to get conduct search in the presence of Gazetted Officer or a Magistrate, who can be called at the spot, but accused reposed confidence in ASI Pritam Singh. Consent memo of the accused was recorded, put his thumb marked by the accused and attested by HC Sukha Singh and HC Bikramjit Singh and conducted search of the plastic bag, which led to recovery of poppy husk. Two samples of 250 gms each were separated and separate parcels were prepared and residue poppy husk on weighment was found to be 15 kg 500 grms, which was also converted into a separate parcel. Both the sample parcels and bulk parcel were lac sealed by ASI Pritam Singh with his seal bearing impression 'PS'. Specimen of the seal was prepared separately. Seal after use was handed over to HC Sukha Singh. All the three parcels and specimen of the seal were taken into possession vide recovery memo attested by the witnesses. Accused was arrested. Personal search of the accused was conducted. Ruqa was prepared and sent to police station, which led to the registration of formal F.I.R against the accused. Investigating Officer also prepared rough site plan of the place of recovery. Accused was arrested.

3. On returning the police station, the accused, witnesses and case property were produced before ASI SHO/ Ranjit Singh, who verified the facts of the case, interrogated the accused and affixed his seal bearing impression "RS" on the parcels as well as on sample seal chit and attested it along with case property. On the directions of SHO, Investigating Officer deposited case property with MHC of the police station. On completion of ensuing investigation and on receipt of report of Chemical Examiner the challan was presented in the Court."

On presentation of challan against accused-appellant, copies of

Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15(b) of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Constable Manjit Singh, PW-2 ASI Pritam Singh, Investigating Officer, PW-3 Ranjit Singh, PW-4 Head Constable Karnail Singh, PW-5 ASI Narinder Singh and PW-6 Head Constable Sukha 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 and also pleaded that he 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 argued 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. The recovery from the accused-appellant is sudden and by chance. 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 02.05.2016 passed by learned Judge, Special Court, Sangrur, 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 poor person, first offender, only bread earner of the family and the recovery from the appellant falls under non-commercial quantity and the appellant has undergone actual sentence of 2 months and 25 days. He further contended that the appellant is suffering from the criminal proceedings since 2013.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is poor person, first offender, only

already undergone actual sentence of 2 months and 25 days out of the total sentence as on 20.10.2016, and is suffering from long protracted criminal proceedings since 2013 i.e. for the last three years, and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 16 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. The appellant is directed to pay the fine within one month from receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Kulwant Singh @ Kanta is on bail, his bail/surety bonds stand discharged.

October 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No