

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

Crl. Appeal No.S-1889-SB of 2016 (O&M)

Date of Decision: August 09, 2016

Mohinder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Sekhon Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 02.04.2016 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 two years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo simple 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:-

“Brief resume of prosecution case is that on 24.-04-2012 ASI Sukhchain Singh along with police party was on patrolling duty near T-point Chotian. From Jakhal side one person was found coming on foot, having a plastic bag on his head at around 7.00 PM. Seeing the police party he tried to retreat. But on the basis of suspicion police party apprehended him

and inquired about his name. He disclosed his identity. Thereafter, ASI after disclosing his identity, informed the accused that police suspect him to be in possession of some contraband and for this purpose police wants to make a search of his person and plastic bag in his possession. He was also apprised about his right that in case he desire, search can be conducted in presence of magistrate or Gazetted officer and any of these can be called at the spot or he can be taken to them. However accused reposed faith in the police. For this purpose a separate consent memo was recorded on which accused put his thumb impression. Thereafter police party headed by ASI Sukhchain Singh checked the plastic bag from which poppy husk was recovered. 2 samples of 250 g each was taken out and remaining case property on weighment came to be 24kg 500g. This property so recovered was duly sealed with seal SS and sample seal was handed over to HC Bhagwant Singh. Police party tried to join independent witness but none became ready. Accused was found to have committed offence under NDPS Act by possessing 25kg poppy husk. Therefore a ruqa was sent by ASI Sukhchain Singh through PHG Sukhbir for registration of FIR. He then prepared site plan at the spot and arrested the accused. Personal search memo was prepared and arrest memo was also prepared. Thereafter accused along with police party was produced before SHO who put his separate seal SG over the case property after verifying the facts. Directions were issued by the SHO for putting the accused in lock-up and depositing the case property with Malkana. Accordingly ASI Sukhchain Singh deposited the case property with police Malkhana. On 25-4-2012 Sukhchain Singh obtained case property from MHC Jagvinder Singh and produced the case property along with accused before JMIC Moonak. Ld. Magistrate verified the case property and withdrew a representative sample of 250g and put his seal TBS over the representative sample and bulk parcel. He prepared sample seals and directed the police to deposit the case property with CJM Sangrur. Case property was deposited with CJM, Sangrur and one sample of 250g duly sealed with SS/SG was obtained back with permission of the CJM Sangrur for depositing the same with the chemical examiner. On 30-4-2012 HC Jagvinder Singh sent sample duly sealed with SS/SG to the office of chemical examiner Kharar and that report has been received. From that report accused was found to have committed offence under Section 15 of NDPS Act and challan as presented accordingly.”

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

In support of its case, prosecution examined PWs ASI Sukhchain Singh, Investigating Officer, Head Constable Bhagwant Singh, Inspector Sanjeev Goyal, Head Constable Jagwinder Singh, Constable Jinder Kumar and Ravinder Kumar, Najir.

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.

In defence, accused-appellant examined DW-1 Jagdev Singh.

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. Further, I find that every effort was made to join independent witness but nobody agreed to join the investigation. 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 02.04.2016 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 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 about seven months. He further contended that the appellant is suffering from criminal proceedings since 2012.

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 about seven months out of the total sentence and the petitioner is suffering from long protracted criminal proceedings since 2012 i.e. for the last four years, and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 25 kgs. 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Mohinder Singh, 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.

August 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No