

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

Crl. Appeal No.S-1929-SB of 2016 (O&M)
Date of Decision: May 30, 2016

Fateh Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Singla, Advocate
for the appellant.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 27.04.2016 and order of sentence dated 30.04.2016 passed by learned Special Judge-cum-Addl. Sessions Judge, Kurukshetra, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 15 of the NDPS Act.

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

“Briefly stating allegations of the prosecution, in the instant

case, are that a police party headed by ASI Rohtash had intercepted the accused 'Fateh Singh' on Ladwa-Gajlana-Dhanro T.Point, when he was going on a motorcycle. As per prosecution, the accused was checked on the basis of secret information and on search of the bag, kept on the motorcycle, he was found in possession of 2 kilograms of Poppy Straw. On recovery of contraband the above named Investigating Officer completed all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of site plan of place of recovery, preparation of various memos and recording of statements of witnesses u/s 161 Cr.P.C. On completion of usual formalities of investigation, the report under Section 173 Cr.PC. was prepared and presented in the court."

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 ASI Rajender Singh, PW-2 Constable Suresh Kumar, PW-3 Inspector Chhotu Ram, PW-4 Constable Dalbir Singh, PW-5 ASI Karambit, PW-6 Sh.Amit Gautum, JMIC, Kurukshetra, PW-7 Shiv Raj, Incharge Judicial Malkhana, PW-8 ASI Rohtash Kumar, Investigating Officer, PW-9 ASI Ram Pal, PW-10 SI Balwant Singh, PW-11 Head Constable Satpal and PW-12 Smt.Noorpur Bishnoi, SHO.

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. 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 27.04.2016 passed by learned Special Judge-cum-Addl. Sessions Judge, Kurukshetra, 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 2 months and 27 days of actual sentence.

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 2 months and 27 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. 2 kgs. poppy straw, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced and appellant is directed to pay fine of ₹2000/- instead of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 15 days.

Accordingly, present criminal appeal stands partly allowed.

Appellant Fateh 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.

May 30, 2016
Vgulati

(INDERJIT SINGH)
JUDGE