

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

Crl. Appeal No.S-2142-SB of 2016 (O&M)

Date of Decision: November 28, 2016

Kashmir Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amaninder Singh 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 05.05.2016 passed by learned Judge, Special Court, Fazilka, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one and half year and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of four months under Section 15 of the NDPS Act.

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

“2. The brief facts of the case of the prosecution are that on 18.09.2013 ASI Baljit Singh along with HC Sukhraj Singh, No. 226, Constable Lovepreet Singh, No. 828, Constable Jagdish Rai, No. 92 and PHG Banwari Lal, No. 6746 was present at ‘T’ Point G.T.Road Abohar-Ganganagar, in the area of village Gumjal in connection with Nakabandi, then one Trolla (Ghora) bearing registration No.HR-46F-6065 came from the side of Ganganagar and ASI Baljit Singh gave signal to stop.

The driver of the Trolla stopped the trolla about 10-12 Karams behind the place of Nakabandi. ASI Baljit Singh along with other officials went near the Trolla and found that its driver was Hindu gentleman, who got nervous and no other person was found in the cabin of trolla. ASI Baljit Singh asked the driver to come out of the trolla and on inquiry, he disclosed his name as Kashmir Singh son of Sheesha Singh, resident of Bholu Wala Road, Gobind Nagar Basti, Police Station City, Faridkot. ASI Baljit Singh, I.O. informed the said person that he has suspicion that there is some intoxicant substance in the cabin of his trolla and he wants to get the search of the cabin conducted and ASI Baljit Singh, I.O. informed the accused that he has legal right to get search of the cabin conducted from some Gazetted Officer or a Magistrate but the accused reposed confidence in I.O. Then I.O. prepared the Consent memo of accused, which was signed by the accused in Punjabi script. On search of the cabin of trolla, one Gatta plastic containing poppy husk was recovered from the backside of driver seat of trolla. Then I.O. separated 250 Grams of poppy husk as sample and one additional sample of 250 Grams of Poppy husk from the recovered poppy husk and its separate parcels were prepared and the remaining bulk on weighing came out to be 12 KG 500 Grams and its separate parcel was prepared. The sample parcels and bulk parcel were sealed by the I.O. with his seal bearing impressions "BS". Form No. M-29 was prepared at the spot. Seal after use was handed over to HC Sukhraj Singh, No.226. The sample parcels, bulk parcel, Form-M 29 and above said Trolla were taken into police possession vide separate recovery memo. On personal search of accused, currency notes of Rs.2700/- were recovered from the front pocket of shirt worn by him, which were taken into police possession vide separate recovery memo. I.O. sent ruqa to the police station through PHG Banwari Lal, No. 6746 for registration of a case as against the accused. Investigation was initiated. Site plan was prepared and statements of the witnesses were recorded under section 161 Cr.P.C. Accused Kashmir Singh was arrested in the present case. Truck bearing registration No. HR-46F-6065 was taken into police possession vide separate recovery memo. After completion of investigation, challan against the accused was 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 Sukhraj Singh, PW-2 Constable Lovepreet Singh, PW-3 ASI Gurcharan Singh and PW-4 ASI Baljit 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.

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 13 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. He further contended that the appellant is poor person, only bread earner of the family and is suffering from criminal proceedings since 2013. He further contended that accused-appellant has already undergone actual sentence of 4 months and 1 day.

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.

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 05.05.2016 passed by learned Judge, Special Court, Fazilka, 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 poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of 4 months and 1 day out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 13 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 the date of 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 Kashmir Singh is on bail, his bail/surety bonds stand discharged.

November 28, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No