

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

**Crl. Appeal No.S-2632-SB of 2016 (O&M)
Date of Decision: September 06, 2016**

Jagjit Singh @ Jagga

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Sharma, 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 the judgment of conviction and order of sentence dated 29.04.2015 passed by learned Judge, Special Court, Fazilka, whereby the appellant along with co-accused was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹20,000/- 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 10.12.2013 ASI Jalandhar Singh along with HC Balkar Singh, No.215, HC Sukhraj Singh, No.226, HC Harjinder Singh, No.1150, PHG Banwari Lal, No.6746 was on patrolling duty

on Govt. vehicle Bolero bearing registration No.PB-05R-9850, which was being driven by HC Krishan Lal, 943 in connection with patrolling and checking of suspected persons and the police party was going from village Khuian Sarwar to Haripura Diwan Khera etc. When the police party reached 01 km. ahead of Diwan Khera road, then two hindu persons were seen at kacha passage and out of these two persons, one person was sitting on a Gatta plastic, whereas the second person was standing near him. On seeing the police party, both the above said persons got nervous and tried to slip away. On suspicion, both the accused were apprehended by the I.O. with the help of other persons. On enquiry, the person sitting on the plastic gunny bag disclosed his name as Kuldip Singh @ Seepu son of Balwinder Singh, resident of Noorpur Bet, Police Station Ladowal, District Ludhiana and the second person disclosed his name as Jagjit Singh @ Jagga son of Babu Singh, resident of Noorpur Bet, Police Station Ladowal, District Ludhiana. ASI Jalandhar Singh informed both the said persons that he is having suspicion that they were carrying some intoxicant substance in the Gatta plastic carried by them. ASI Jalandhar Singh made the said persons aware of their right to get them and their Gatta plastic searched in the presence of some Gazetted Officer or Magistrate but both the accused reposed confidence in the I.O. Then ASI Jalandhar Singh prepared consent memo of accused which was signed by both the accused. A witness from the public was tried to be joined in the police party but none was available. Then I.O. checked the Gatta plastic and Poppy husk was recovered. The I.O. separated 250 grams of Poppy husk as sample and 250 grams as additional sample and the remaining bulk on weighment came out to be 19 kgs. 500 Grams. The sample parcels and bulk was put into separate parcels. The bulk parcel and sample parcels were sealed by the I.O. with his seal bearing impression "JS". Form M-29 was prepared at the spot. The seal after use was handed over to HC Balkar Singh, No.215. Both the sample parcels, bulk parcel along with Form M-29 were taken into police possession vide separate recovery memo. On personal search of accused Kuldip Singh, currency notes worth Rs.200/- were recovered from the back pocket of trouser worn by accused Kuldip Singh and on personal search of accused Jagjit Singh, currency notes worth Rs.100/- were recovered from the back pocket of trouser worn by accused Jagjit Singh, which were taken into police possession vide separate recovery memos. Ruqa was sent to the Police Station through PHG Banwari Lal, for registration of case against the accused, on the basis of which present FIR was registered. Investigation was initiated. Site plan was prepared and the statements of the witnesses were recorded. After completion of investigation, challan against the accused was presented in the court. "

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused were charge-sheeted under Section 21 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Jalandhar Singh, Investigating Officer, PW-2 Constable Jagdish Rai and PW-3 Head Constable Balkar 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 has been falsely implicated. The accused pleaded that no recovery was effected from him.

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 20 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is first offender and only bread earner of the family. He also contended that accused-appellant has already undergone actual sentence of 1 year 6 months and 7 days out of the total sentence.

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.

I have heard learned counsel for the appellant as well as learned 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 29.04.2015 passed by learned Judge, Special Judge, Fazilka, is correct, as per law and does not require any interference from this Court.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first offender, 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 1 year 6 months and 7 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. 20 kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence imposed upon the appellant is also reduced and he is directed to pay fine of ₹10,000/- instead of ₹20,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months instead of four months.

Accordingly, present criminal appeal stands partly allowed.

Appellant Jagjit Singh @ Jagga, who is in custody, be set at

liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

September 06, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No