

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

**Crl. Appeal No.S-2867-SB of 2016 (O&M)
Date of Decision: November 08, 2016**

Jagseer Singh @ Sheera and another

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Brar, Advocate
for the appellants.

Ms.Bhavna Gupta, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Punjab, challenging the judgment of conviction dated 26.07.2016 and order of sentence dated 28.07.2016 passed by learned Judge, Special Court, Fazilka, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹5000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months each under Section 21 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 26.12.2014, ASI Manjit Singh along with ASI Laljit Singh, No.

1215, HC Raj Kumar, No.600, HC Amarjit Singh, No.700, HC Prem Kumar, No.1991 was on patrolling duty on a private vehicle, and the police party was going from Jalalabad to village Hisaan Wala on the pavement of canal. When the police party reached near the bridge of village Hisaan Wala, then two Hindu young persons were seen coming, who on seeing the police party tried to turn towards their left hand. On suspicion, ASI Manjit Singh apprehended the accused with the help of other police officials. On inquiry, one person disclosed his name as Jagseer Singh @ Sheera son of Raj Singh, resident of Chak Janisar @ Chhimbiyan wala and the other person disclosed his name as Gursewak Singh @ Sewak son of Major Singh, resident of Chehal, Police Station Sadar, Kotkapoora, District Faridkot. Then ASI Manjit Singh, I.O. informed the accused that he is having suspicion that they were carrying some intoxicant substance with them and their personal search is to be conducted. ASI Manjit Singh also made them aware of their legal right to get them searched in the presence of some Gazetted Officer or a Magistrate but the accused reposed confidence in the I.O. Then ASI Manjit Singh prepared consent memo of accused separately. Before conducting personal search of the accused, I.O. tried to join a public witness in the police party but none was available. Then on search of accused Jagseer Singh @ Sheera Heroine wrapped in a polythene was recovered from the right pocket of trouser worn by him. Then I.O. separated 01 Grams of Heroine as sample and 01 Grams of Heroine as additional sample and transferred the same into separate plastic boxes and the remaining Heroine was measured and the same came out to be 06 Grams, which was transferred into separate plastic box. Then on search of accused Gursewak Singh @ Sewak, Heroine was recovered from the left pocket of jean worn by the accused Gursewak Singh. Then I.O. separated 01 Grams of Heroine as sample and 01 Grams of Heroine as additional sample out of the recovered Heroine and transferred the same into separate plastic boxes and the remaining Heroine was measured and the same came out to be 05 Grams, which was transferred into separate plastic box. The Sample parcels and bulk parcels were sealed separately by the I.O. with his seal bearing impressions "MS". Form No. M-29 was prepared at the spot. Seal after use was handed over to ASI Laljit Singh. All the sample parcels and bulk parcels were taken into police possession. Ruqa was sent to the police station through HC Raj Kumar, No.600 for registration of a case as against the accused. The accused were arrested in the present case. Statements of the witnesses were recorded under section 161 Cr.P.C. After completion of investigation, challan against the accused was presented in the court."

challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants 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 Manjit Singh, Investigating Officer, PW-2 ASI Joginder Singh, Officiating SHO, PW-3 Constable Sandeep Kumar and PW-4 ASI Laljit Singh, recovery witness.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and also pleaded that they have been falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that 08 grams of heroin from appellant Jagseer Singh @ Sheera and 07 grams of heroin from appellant Gursewak Singh @ Sewak has been recovered, which falls under non-commercial quantity. The appellants are suffering from criminal proceedings since 2014. He further contended that the appellants are first offender and only bread earner of the family. He further contended that accused-appellants have already undergone

imprisonment of more than 4 months 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. She 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 26.07.2016 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 appellants are first offender, only bread earners of the family and are suffering from long protracted criminal proceedings since 2014 and further in view of the fact that appellants have already undergone actual sentence of more than 4 months out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 08 grams of heroin from appellant Jagseer Singh @ Sheera and 07 grams of heroin from appellant Gursewak Singh @ Sewak, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellants Jagseer Singh @ Sheera and Gursewak Singh @

Sewak, who are in custody, be set as liberty forthwith, if their custody is not required in connection with any other case, subject to payment of fine as imposed by the Courts below, if already not paid.

November 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No