

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

Crl. Appeal No.S-2962-SB of 2016 (O&M)

Date of Decision: December 09, 2016

Jagmohan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Gupta, Advocate
for the appellant.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction dated 02.08.2016 and order of sentence dated 09.08.2016 passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 21 of the NDPS Act. However, co-accused Satwinder Singh alias Roopa was acquitted of the charges framed against him.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, are as under:-

“2. On 06.09.2014 at about 4:00 p.m., SI Ashwani Kumar along with ESI Ajaib Singh No.902 and ASI Jai Pal No.1001 was present at T-Point, Majri Kalan within the revenue estate of village Jhansa on a Government vehicle bearing No.HR65-3354, being driven by C.Pardeep Kumar No.235. At that time, from the side of village Rohti, a young person was seen coming on foot who on seeing the police party, retraced his steps and started moving briskly. SI Ashwani Kumar suspecting him to be in possession of some stolen articles, over powered him with the aid of fellow policemen who on being asked, disclosed his name as Jagmohan Singh son of Kashmir Singh, caste of Jat Sikh, resident of village Thaska Miranji, Police Station Ismailabad. Personal search of Jagmohan Singh was taken and from right side pocket of his shirt, a small polythene colour black was found which was opened and checked and was found containing heroin. On the asking of SI Ashwani Kumar, said Jagmohan Singh disclosed that he had purchased the heroin from Satwinder Singh alias Roop Singh son of Kulwant Singh, caste of Jat Sikh, resident of Chammu Kalan. Two samples of 5 grams each were separated and remaining upon being weighed came to 10 grams heroin. Both the samples and residue heroin were converted into parcels on which seal impression “AK”, two each were affixed. Sample seals were separately prepared and seal after being used was handed over to ESI Ajaib Singh. All the parcels of heroin and sample seals were seized vide separate recovery memo which was signed by the accused and witnesses. Thus, it was alleged that accused Satwinder Singh by selling heroin and accused Jagmohan by keeping in his conscious possession 20 grams heroin committed offences punishable under Sections 21 and 29 of the Act. Written intimation Ex.P3 was sent to Police Station through C. Pardeep Kumar No.235 for registration of FIR whereupon formal FIR Ex.P2 was registered.

3. During investigation, site plan of place of recovery was prepared and all other formalities thereby making compliance of statutory provisions of the Act, were completed. Statements of witnesses under Section 161 Cr.P.C. were recorded and after completion of all usual formalities of investigation, report under Section 173 Cr.P.C. was prepared and presented in the court for putting the accused on trial.”

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 alongwith co-accused was 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 nine witnesses.

At the close of prosecution evidence, the accused-appellant and co-accused 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 falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant and acquitted co-accused 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 grams of heroin has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person and only bread earner of the family. He further contended that accused-appellant has already undergone 8 months 2 days of actual 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 02.08.2016 passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, 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 2014 i.e. for the last two years and further in view of the fact that appellant has already undergone actual sentence of 8 months 2 days out of the total sentence including remission and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 grams of heroin, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The fine imposed by the trial Court is also reduced to ₹5000/- and in default of payment of fine, the appellant shall undergo rigorous imprisonment for a period of one month.

Accordingly, present criminal appeal stands partly allowed.

Appellant Jagmohan, 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.

December 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No