

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

Crl. Appeal No.S-3267-SB of 2016 (O&M)
Date of Decision: November 30, 2016

Jagdish Singh alias Jaggi

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Punia, 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 State of Punjab, challenging the judgment of conviction and order of sentence dated 01.09.2016 passed by learned Judge, Special Court, Ludhiana, 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 ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month 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, Ludhiana, are as under:-

“2. The brief facts of the case of the prosecution are that on 22.3.2013, ASI Ajmer Singh along with other members of the police party were going towards village Ramgarh Sardaran to Maloud side in connection with patrolling duty on private vehicles. When the police party reached at bridge Ramgarh

Sardaran, then at about 5.30 PM, one person was seen coming from Maloud side. He was carrying one plastic bag on his head, who on seeing the police party got perplexed and tried to turn back. He was apprehended on the basis of suspicion. On being asked, he disclosed his name as Jagdish Singh son of Hardial Singh, resident of Village Ramgarh Sardaran. ASI Ajmer Singh disclosed his identity to him and told him that he has suspicion that there is some objectionable article in his possession in the plastic bag and he wants to conduct search of said plastic bag lying on his head. ASI Ajmer Singh also told him that he had legal right to get his search conducted from some Gazetted officer or Magistrate and if he so desire, then the arrangement thereof could be made but the accused reposed faith in ASI Ajmer Singh and opted for search from him. Then ASI Ajmer Singh prepared his consent memo which was signed by the accused Jagdish Singh in English language and the same was witnessed by other police officials. ASI Ajmer Singh tried to join independent witness but everybody showed their inability and did not join the police party. After that the plastic bag was searched by the Investigating Officer and on opening the mouth of the bag, poppy husk was recovered. Two samples of 250 gms. each from the said poppy husk were taken and prepared its sample parcels and prepared the parcel of remaining 11 KG- 500 Grams. poppy husk after putting it in the same plastic bag. Then ASI Ajmer Singh sealed the two sample parcels and one bulk case property parcel with his seal bearing impression "AS". ASI Ajmer Singh also prepared specimen seal impression on CFSL form and seal after use was handed over to HC Charanjit Singh. All the parcels were taken into possession by ASI Ajmer Singh vide memo which was witnessed by above said witnesses. Ruqa was sent to the police station through Constable Karamjit Singh and on its basis formal FIR was registered by SI Bikramjit Singh. ASI Ajmer Singh prepared rough site plan with correct marginal notes and arrested the accused and the intimation of his arrest was given to his relatives and arrest -cumintimation memo was prepared and witnessed by above said witnesses. ASI Ajmer Singh also prepared inventory report and recorded the statements of witnesses. On reaching the police station, the entire case property along with the accused and witnesses were produced before SI Bikramjit Singh, who verified the facts of the case and sealed the case property with seal impression 'BS' and thereafter SI Bikramjit Singh deposited the case property before MHC Harbans Singh. On 23.3.2013, he took the entire case property from MHC Harbans Singh and produced the same along with sample chit in the court of Judicial Magistrate First Class, Ludhiana, which was signed by the Duty Magistrate. He also moved applications regarding seen purpose and inventory purpose and on which the order was passed by the learned Magistrate on 23.3.2016. After that, he deposited the entire case property with District Nazir,

Ludhiana, except one sample parcel, sample seal chit and form No. M29. On return to the police station, he deposited the sample parcel, sample seal chit and form No. M29 along with the receipt with MHC Harbans Singh. Sample was sent to the laboratory. On receipt of chemical examiner report and after completion of all the formalities 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 Ajmer Singh, PW-2 ASI Charanjit Singh, PW-3 HC Harbans Singh, PW-4 Constable Jagpreet Singh and PW-5 SI Bikramjit 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.

In defence, accused examined DW-1 Pritam Singh.

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 12 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

poor person and only bread earner of the family. He further contended that accused-appellant has already undergone 4 months 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 01.09.2016 passed by learned Judge, Special Court, Ludhiana, 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 three years and further in view of the fact that appellant has already undergone actual sentence of 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. 12 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Jagdish Singh alias Jaggi, 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.

November 30, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No