

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

**Crl. Appeal No.S-3314-SB of 2016 (O&M)
Date of Decision: November 21, 2016**

Manjit Singh @ Pahalwan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ajay Arora, Advocate
for the appellant.

Mr.B.S.Virk, 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 10.08.2016 and order of sentence dated 12.08.2016 passed by learned Addl. Sessions Judge, Sirsa, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one and half years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two 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, Sirsa, are as under:-

“2. The case of the prosecution is that on 21.05.2013 a police party headed by Ran Singh SI (PW7) was present at a canal Bridge in the area of village Nejadela Kalan in connection

with patrolling State Vs Manjit Singh and another 2 duty in a govt. vehicle No.HR-57-4039. In the mean time, a person was seen coming on a bicycle on the bank of the canal while carrying a plastic bag on the carrier of the bicycle. On seeing the police party the said person tried to turn back his bicycle but on suspicion he was apprehended. On enquiry, the said person disclosed his identity as Manjit Singh alias Pehalwan son of Bhagwan Dass r/o village Farwai Kalan. Thereafter, PW4 had served a notice Ex.PW6/A to the accused u/s 50 of the NDPS Act apprising his right of search of the bag before some gazetted officer or Magistrate. Vide reply Ex.PW6/B accused Manjit Singh reposed faith in the Investigating officer. Thereafter, PW7 conducted the search of the bag which led to the recovery of poppy straw. Two samples of 100 grams each from the said poppy straw were separated and remaining poppy straw on weighment was found to be 19.8 kilograms. Both the samples and the residue were converted into separate parcels. All the parcels of the samples and the residue were sealed with seal 'RS' and the same were taken into police possession vide recovery memo Ex.PW6/C signed by the accused and attested by HC Tarsem Singh and Ran Singh (PW6). Seal after use was handed over to PW6 Ran Singh. PW7 the Investigating officer sent ruqa Ex.PW7/A to P.S. Sadar Sirsa through constable Vijay Singh where on the basis of which formal FIR Ex.PW7/B was registered by ASI Inderjit. ASI Inderjit had made his endorsement Ex.PW7C on the ruqa. PW7 prepared rough site plan Ex.PW7/D of the place of recovery with correct marginal notes, formally arrested the accused and recorded the statements of witnesses u/s 161 Cr.P.C. and prepared report u/s 57 of the NDPS Act State Vs Manjit Singh and another 3 Ex.PW7/E. PW7 the Investigating officer had produced the accused, entire case property and report Ex.PW7/E before the SHO/SI Raja Ram who reached at the spot per chance who verified the facts of recovery from the accused and recovery witnesses and affixed his seal 'RR' on all the parcels and specimen sheet. He also recorded the statements of witnesses. Thereafter, the case property was deposited with the MHC of the police station with seals intact and the accused was put in police lock up. 3. On the next day, i.e. 22.05.2013 accused was taken out from the police lockup and on enquiry he made his disclosure statement Ex.PW6/D wherein he disclosed that he had purchased the recovered poppy straw from Rajender alias Jindal son of Thakar Dass r/o Ding Mandi. Thereafter, the accused and entire case property along with application Ex.PW7/F were produced before learned Illaqa Magistrate for attestation of inventory. During the proceeding of inventory, Om Parkash photographer had taken photographs of the case property. Learned Illaqa Magistrate, attested the inventory and passed detailed order Ex.PW7/G. Thereafter, the Investigating officer deposited one sample parcel and specimen seal impression with MHC and

remaining case property in Judicial Malkhana and accused was sent in judicial custody. The then MHC ASI Satbir Singh (PW8) of the Police station had sent one sealed sample parcel to the office of Director, FSL, Madhuban for analysis without any tampering. In FSL report Ex.PB the sample of this case was identified as poppy straw (Chooru Post) of papaver somniferum L. On 23.8.2014 accused Rajender was joined in the investigation as he was granted anticipatory State Vs Manjit Singh and another 4 bail by the court. After completion of investigation, the accused were sent to face trial under Section 15,27-A,61,85 of N.D.P.S. Act by the S.H.O. P.S. Sadar Sirsa."

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 EASI Jangi Ram, PW-2 ASI Om Parkash, PW-3 Sh.Suresh Pal, the then SHO, PW-4 SI Raja Ram, PW-5 Atma Ram, PW-6 ASI Ran Singh, PW-7 SI Ran Singh, Investigating Officer and PW-8 ASI Satbir 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 Jaswant 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 20 kgs. of poppy straw 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 further contended that accused-appellant has already undergone 5 months and 8 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 10.08.2016 passed by learned Judge, Special Court, Sirsa, 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 first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 and further in view of the fact that appellant has already undergone actual sentence of 5 months and 8 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 straw,

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 Manjit Singh alias Pahalwan, 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 as imposed by the Court below.

November 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No