

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

CRA S-3351-SB of 2016 (O&M)

Date of decision : 24.10.2016.

Kuldip Singh and others

... Appellants

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. A.S. Gill, Advocate,
for the appellants.

Mr. Luvinder Sofat, AAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 14.09.2016 passed by Judge, Special Court, Jalandhar, vide which the appellants were convicted under Section 15(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) and sentenced to undergo RI for one year and to pay fine of Rs.2000/- with default stipulation.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

“The brief prosecution version unfolded from the report under Section 173 Cr.P.C., is that on 28.04.2013 SI Satpal (Investigating Officer, hereinafter referred as IO) posted at police station

Bhogpur, Jalandhar. On that day IO alongwith HC Bhupinder Singh, HC Gurshinder Singh, C Rakesh Kumar, C Malkit Singh and PHG Parasram were on private vehicle in connection with patrolling and checking of bad elements and were going from Village Kala Bakra to Village Kishanpur side. When the police party reached near Baba Sidh near to Village Kala Bakra then from the Kishanpur side they saw one car coming towards them who after seeing the police party try to turn back their car. Then IO with the help of accompanying police officials nabbed three persons which were sitting in the car. The car was Indico having a number CH-03-W-9242. Then, IO inquired the name of driver of the said car who disclosed his name as Kuldip Singh Son of Ajit Singh R/o Village Jhal Tikri, Police Station Kotwali, District Kapurthala and the person sitting beside his seat disclosed his name as Davinder Singh @ Sonu, Son of Sarwan Singh, R/o Village Jhal Tikri, Police Station Kotwali, District Kapurthala and the person sitting behind seat disclosed his name as Yograj @ Mota, S/o Baldev Singh, R/o Village Jhal, Thikriwal, Police Station Kotwali, Kapurthala. Then IO

introduced all the accused by his name, rank and place of posting and further told all the accused that he has a suspicion regarding some intoxicant substance from them and in their car and your car alongwith you required to be searched and you have a legal right to get the search from him, some Magistrate or from some Gazetted Officer but all the accused reposed confidence in IO and in this regard IO prepared consent memos of all the accused.

Before conducting the search IO tried to join public independent witness but nobody come forward. Thereafter, in the presence of accompanying police officials IO conducted the search of car and got recovered one plastic bag tied with rope Jute and after opening it saw that the poppy straw got recovered from the car. After arranging the weight and scale IO took out two samples of 250 grams each from the recovered poppy husk and prepared two sample parcels of the same. On weighing the remaining poppy husk it came out to be 17 Kilo 500 grams. IO prepared one bulk parcel of this 17 Kilo 500 grams of poppy husk alongwith polythene bag. IO sealed the sample parcels and bulk parcel with his seal

impression 'SP' and also prepared sample seal. IO affixed his seal impression 'SP' on form M-29 at the spot. IO handed over his seal after use to HC Bhupinder Singh. IO took the sample parcels and bulk parcel alongwith car into police possession. Accused could not produced any permit or license regarding possession of above said poppy straw in their possession. Thereafter, IO sent Ruqa to the police station through C Malkit Singh on the basis of which formal FIR was registered at police station Bhogpur by ASI Paramjit Singh. IO prepared site plan of the place of recovery. IO arrested all the accused in this case. Intimation regarding arrest of all the accused was sent to their relatives. IO conducted formal personal search of all the accused one by one after their arrest. From personal search of accused Kuldip Singh Indian currency notes of Rs.230/-, one mobile phone Marka VELLCOMX294 was recovered and from personal search of accused Davinder Singh @ Sonu Indian currency notes of Rs.180/-, one mobile phone Marka Samsung were recovered and from personal search of accused Yograj Singh Indian currency notes of Rs.120/-, one mobile phone Marka

Nokia X2-02 were recovered. In this regard IO prepared personal search memos of all the accused. IO recorded statements of witnesses. On return to police station the case property of three parcels as stated above alongwith documents and car above numbered got deposited with MHC Sukhwinder Singh and sent all the accused to custody. ”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Section 15 of the NDPS Act was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, SI Satpal, I.O., PW-2, ASI Sukhwinder Singh, PW-3 ASI Bhupinder Singh, PW-4 C. Karnail Singh, and thereafter closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the trial Court vide

impugned judgment and order dated 14.09.2016, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 14.09.2016, passed by the trial Court, the accused have filed the instant appeal.

It is submitted that the prosecution has failed to prove its case against the accused. It has not been proved that the accused persons were found to be in conscious possession of the contraband. Appellants Davinder Singh @ Sonu and Yograj @ Mota were sitting on the back seat of the car as passengers. They have no connection with the recovery whatsoever. It is further contended that the car was being driven without the knowledge of Bagga Singh, the owner of the vehicle. The trial Court has not discussed the evidence in detail. It has passed the judgment of conviction and the order of sentence nonchalantly.

On the other hand, the learned State counsel contends that the prosecution has successfully established its case against all the accused. The Court below has rightly convicted all the accused/appellants and sentenced them to undergo imprisonment for one year. The judgment is well reasoned and does not call for any interference.

I have heard the learned counsel for the parties and have gone through the case file.

In the instant case, the recovery of 17 kilograms 750 grams of poppy husk is stated to have been effected on 28.04.2013 from Indica car bearing No. CH-03-W-9242. Kuldip Singh was the driver of the car whereas Davinder Singh @ Sonu and Yograj @ Mota were sitting on the back seat. From the car, one plastic bag tied with Jute rope was found. On opening it, it was found to contain poppy straw. Two samples of 250 gms each were taken and on weighing the remaining poppy husk was found to be 17 kilograms 500 grams. It was packed in separate parcels. So far as accused Kuldip Singh is concerned, since he was driving the vehicle at the relevant time and place, therefore, Court feels that he was in conscious possession of the contraband but the remaining persons i.e. Davinder Singh @ Sonu and Yograj @ Mota who were the mere passengers cannot be said to be in conscious possession of the contraband.

In view of above, the accused Davinder Singh @ Sonu and Yograj @ Mota are acquitted of the charge under Section 15(b) of the NDPS Act. However, the conviction of accused Kuldip Singh, driver of the car is maintained. The prosecution has failed to bring on record any evidence that the car was being used by the driver with the consent or knowledge of the owner and therefore the accused Bagga Singh-the owner is also acquitted of the charge under Section 15(b) of the NDPS Act.

Now reverting to the sentence, it is submitted that the

accused Kuldip Singh is the sole bread earner of his family; he is not involved in any other FIR; he has already undergone actual sentence of two months and 11 days and the quantity recovered is small. The appellant comes from the lowest income group of the society. Taking into consideration the mitigating circumstances stated aforesaid, the sentence of the accused-Kuldip Singh is reduced from one year to six months under section 15(b) of the NDPS Act. However, the sentence of fine shall remain intact. The appellant be taken into custody forthwith to suffer the remaining sentence.

The appeal is allowed partly in the manner indicated above.

24.10.2016.
SN/vanita

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No