

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

**Crl. Appeal No.S-3386-SB of 2016 (O&M)
Date of Decision: December 03, 2016**

Sunita Kumari

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Karan Chaudhary, 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 02.08.2016 passed by learned Judge, Special Court, Gurdaspur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹15,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 22 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Gurdaspur, are as under:-

“2. In brief, the prosecution story is that on 02.06.2013, the police party headed by ASI Makhan Singh along with other

cops, while on patrol duty, in order to search for miscreants, were going from Dina Nagar to Behrampur Road, through village Awankha. When the police party reached near grain market Awankha, then from the side of grain market, one lady carrying glazed envelope in her right hand was spotted, who tried to turn back cleverly, on seeing the police party, therefore, ASI Makhan Singh with the help of his co-officials, intercepted that lady. On being inquired, the said lady disclosed her name as Sunita wife of Balwinder Kumar resident of Purani Abadi Awankha. ASI Makhan Singh apprised the said lady that she is suspect of possessing intoxicant substance, therefore, her search is to be conducted, for which she has got right of search either from him or from Gazetted officer or Magistrate. The said lady told that she intends to get her personal search conducted in the presence of Gazetted officer, therefore non-consent memo of accused was prepared by ASI Makhan Singh. ASI Makhan Singh informed Shri Puran Chand, PPS/DSP/Head Quarter, Gurdaspur, who reached the spot, after 30 minutes. Shri Puran Chand DSP after reaching the spot, disclosed his identity to the accused and he also apprised the accused that since she is suspect of possessing some intoxicant substance, therefore, her personal search is to be conducted regarding which she has legal right to get her personal search conducted either from any other Gazetted Officer or Magistrate. The accused agreed to get her search in presence of DSP Puran Chand. Therefore, the consent memo of the accused was prepared. At the instance of DSP, ASI Makhan Singh through LC Subh Lata No.147 got searched of the accused and from her right hand, one glazed envelope containing intoxicant powder was recovered. Out of the glazed envelope, two samples of 10/10 grams each were taken out and remaining contents of intoxicant powder on being weighed came out and it came out to be 280 grams intoxicant powder. The samples (two) and bulk (1) were sealed by ASI Makhan Singh bearing his seal impression 'MS' and 'PC' of DSP and was taken into possession vide separate memo. ASI Makhan Singh handed over his seal to HC Jaswinder Singh No.1281, whereas, DSP Puran Chand retained his own seal. ASI Makhan Singh sent written message for registration of the FIR through Sohan Lal No.152, on the basis of which FIR was registered. ASI Makhan Singh prepared the site plan. The accused was arrested and information regarding her arrest was given to Sham Lal Sarpanch village Awankha, through telephone. On return to the police station, ASI Makhan Singh handed over the case property and accused to SI Pritam Pal Singh, who also affixed his seal impression "PP" on the case property and deposit the same in the double lock. The accused was put behind bars. On 03.06.2013, SI Pritampal Singh produced the case property and the accused in the Court of learned Ilaka Magistrate. The accused was ordered to be sent to judicial lock up and the case

property except one sample was deposited in the judicial malkhanna. On 10.06.2013, SI Pritam Pal Singh taken out sample parcel from the double lock and handed over it to PHC Naresh Kumar 294 for sending the same to the office of Chemical Examiner. The report of the chemical examiner has been received. In report of chemical examiner the active salt was reported to be Dextropropoxyphene. After the completion of the formalities, the challan was prepared and presented in the court. ”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to her under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 22 of the NDPS Act, to which she pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Makhan Singh, PW-2 DSP Puran Chand, PW-3 Ashwani Kumar, Clerk, PW-4 Inspector Pritam Pal, PW-5 PHC Jagir Chand, PW-6 Head Constable Jaswinder Singh and PW-7 PHC Naresh Kumar.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. She was confronted with the evidence of the prosecution and she denied the correctness of the evidence and pleaded herself 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 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 300 grams of intoxicant powder having active salt of

Dextropropoxyphene has been recovered from the accused-appellant, which falls under non-commercial quantity. He further contended that the appellant is a lady and suffering from criminal proceedings since 2013.

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 Judge, Special Court, Gurdaspur, 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 a lady and is suffering from long protracted criminal proceedings since 2013 i.e. for the last three years and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 300 grams of intoxicant powder having active salt of Dextropropoxyphene, the sentence imposed upon the appellant is reduced and she is directed to undergo rigorous imprisonment for a period of one year instead of three years under Section 22 of the NDPS Act. The fine imposed by the trial Court is also reduced to ₹5000/- and in

imprisonment for a period of one month.

With the above-said modification in the sentence, the present appeal stands dismissed.

December 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No