

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

Crl. Appeal No.S-3628-SB of 2016 (O&M)
Date of Decision: November 30, 2016

Kala Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Sekhon, 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 04.08.2015 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months 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 21 of the NDPS Act.

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

“2. In brief, the case of the prosecution is that on 28.4.2013, SI/SHO Satnam Singh alongwith ASI Kashmir Singh, HC Ram Singh and other police officials on government vehicle bearing No.PB-13-AB-0552 driven by HC Harpal Singh, in connection

with patrolling and checking of suspected persons were going from Sunam towards Jagatpura. At about 6.15 P.M., when the police party reached near the turning of Jagatpura, then from the side of katcha pahi, one person was seen coming on foot, carrying a plastic envelope in his right hand. On seeing the police party, he became perplexed and tried to turn back. On suspicion, he was apprehended by the Investigating Officer with the help of other police officials. On inquiry, he disclosed his name as Kala Singh son of Jeet Singh, resident of Indra Basti, Sunam. Investigating Officer disclosed his identity to the accused. Investigating Officer also disclosed to the accused that he has suspicion that some intoxicating substance was lying in the plastic envelope carried by him in his right hand and he wants to search him and his plastic envelope. Investigating Officer further told the accused that he has got a legal right that the search can be made in the presence of some Gazetted Officer or Magistrate and if he desire so, necessary arrangement can be made to this effect. However, accused reposed confidence on the Investigating Officer. Accordingly, Investigating Officer recorded his consent statement which was thumb marked by the accused after admitting it to be correct and the consent memo was witnessed by ASI Kashmir Singh and HC Ram Singh. Thereafter, Investigating Officer conducted search of the said polythene envelope and one glazed paper was recovered, in which smack was wrapped. On weighment, it came out to be 30 gram. Out of which, Investigating Officer had separated two samples of 5 gram each and converted the same into parcels after putting the same into plastic boxes. On weighment, the remaining smack came out to be 20 gram which was also put into a plastic box alongwith plastic envelope and converted into parcel. All the parcels were sealed by the Investigating Officer with his seal bearing impressions "SS". Sample seal was prepared separately and seal after use was entrusted to ASI Kashmir Singh. The entire case property and sample seal chit was taken into police possession by the Investigating Officer vide recovery memo which was witnessed by the above said witnesses. Investigating Officer sent ruqa to the Police Station through SC Jagtar Singh, on the basis of which formal FIR was got registered. Accused was arrested vide arrest-cum-information memo. Accused was personally searched and during his personal search, Rs.20 were recovered. His personal search memo was prepared by the Investigating Officer. The memos were thumb marked by the accused and witnessed by the above said witnesses. Investigating Officer prepared site plan. Special report was also prepared. Statements of witnesses were recorded. On return to the Police Station, Investigating Officer deposited the case property with Malkhana Munshi HC Gurbhej Singh. On 29.4.2013, Investigating Officer produced the case property and accused before learned SDJM, Sunam. On receipt of report of

Chemical Examiner and after completion of other necessary formalities, the instant challan was presented against the accused 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 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Satnam Singh, Investigating Officer, PW-2 ASI Kashmir Singh, PW-3 Head Constable Gurbhej Singh and PW-4 Constable Sandeep Kaushal.

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.

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 30 grams of smack 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 about 5 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 04.08.2015 passed by learned Judge, Special Court, Sangrur, 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 about 5 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. 30 grams of smack, 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 ₹2000/- and in default of payment of fine, the appellant shall further undergo rigorous imprisonment of 15 days.

Accordingly, present criminal appeal stands partly allowed.

Appellant Kala Singh, 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.

November 30, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No