

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

Crl. Appeal No.S-3802-SB of 2016 (O&M)
Date of Decision: November 23, 2016

Fauja Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Avtar Singh Syan, 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 07.09.2016 passed by learned Judge, Special Court, Patiala, 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 ₹10,000/- and in default of payment of fine, to undergo simple 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, Patiala, are as under:-

“2. The allegations in brief leveled against the present accused Fauja Singh are that on dated 21.3.2014 ASI Mohan Singh along with the other police party was going from village Rohti Channa towards Cremation ground of village Rohti Chhanna, in connection with patrolling duty and checking of suspected

persons and when the police party reached near the turn of the cremation ground, a person was seen coming towards of the cremation ground carrying a plastic bag on his head, who on seeing the police party entered into the cremation ground, but he was apprehended on suspicion. It has been further alleged that on enquiry, he disclosed his name as Fauja Singh son of Babu Singh resident of Rohti Chhana . It has been further alleged that ASI Mohan Singh after disclosing his identity to the accused told that he has a doubt that the accused may be carrying some narcotic substance, in his possession, and he is to be searched for that and before that the accused has a right to get himself searched, either in the presence of some Gazetted Officer or a Magistrate, who can be called at the spot. The aforesaid accused reposed confidence upon ASI Mohan Singh and thereafter, ASI Mohan Singh conducted the search of the bag carried by the accused and poppy husk was recovered from the said bag. Two samples of 250 grams each were separated and the remaining poppy husk weighed to be 9 kilograms 500 grams. Separate parcels of both the samples and bulk were prepared and sealed with seal bearing impressions MS. Specimen seals were prepared and ASI Mohan Singh handed over his seal to HC Ram Singh and the incriminating articles were taken into possession, vide a recovery memo. It has been further alleged that the formal FIR was registered on the basis of the ruqa sent through HC Baljit Singh. Rough site plan depicting the place of recovery was prepared. Report U/s 57 of the Act was prepared. It has been further pleaded that the accused along with the entire case property was produced before SI Gurmail Singh, the then SHO of the police station . Statements of the witnesses were recorded. After completion of investigation, the challan against the aforesaid 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 MHC Gurnek Singh, PW-2 Head Constable Ram Singh, PW-3 Head Constable Jagtar Singh, PW-4 ASI Mohan Singh and PW-5 SI Gurmail 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, the accused examined DW-1 Punjab Singh and DW-2 Samey 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 10 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. He further contended that the appellant is first offender and only bread earner of the family and is suffering from criminal proceedings since 2014. He further contended that accused-appellant has already undergone 3 months 26 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 07.09.2016 passed by learned Judge, Special Court, Patiala, 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 2014 and further in view of the fact that appellant has already undergone actual sentence of 3 months and 26 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. 10 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 Fauja 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, as imposed by the Courts below.

November 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No