

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-45-SB of 2016 (O&M)
Date of Decision: April 05, 2016

Karamjit Kaur

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harkeerat Singh, Advocate
for the appellant.

Mr.P.S.Grewal, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 17.12.2015 passed by learned Judge, Special Court, Ludhaina, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 20.07.2012, ASI Mohan Lal along with police officials was present at Railway Station Road in connection with investigation of a case. Then a lady came from the side of Railway Station, who was carrying a

weighty plastic bag on her head but on seeing the police party, she brought down the bag and placed it under a shady tree and sat on the same. Thereafter, ASI Mohan Lal, Investigating Officer went to her and told that he has suspicion that there is some intoxicant material in her plastic bag and he wanted to conduct its search. The accused was apprised of her legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused reposed confidence in the Investigating Officer. On search as per law, poppy husk was recovered. Two samples of 250 grams each were separated and converted into sealed parcel and remaining poppy husk, on weighment came to 19 kgs. 500 grams, which was converted into bulk parcel. The sample parcels and bulk parcels were sealed by Investigating Officer with seal impression 'ML'. Case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Rough site plan was prepared. Accused was arrested. Statements of witnesses were recorded. On return to the police station, the case property along with the accused was produced before Sub Inspector Karnail Singh, who after verifying the facts from the accused, affixed his seal bearing impression 'KS' on the case property. After necessary investigation, the challan was presented against the accused-appellant.

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 15 of the NDPS Act, to which she

pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Mohan Lal, PW-2 Head Constable Baljit Singh, PW-3 SI (Retd.) Karnail Singh, PW-4 Constable Gurpreet Singh and PW-5 Head Constable Balbir Singh.

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 stated that nothing was recovered from them.

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 argued mainly on one point that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed. In the alternative, learned counsel for the appellant, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The PWs have consistently deposed regarding the prosecution version. Link evidence is complete. He further argued that all the mandatory provisions of the NDPS Act have been complied with. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that it is settled law that the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity of the police officials against the accused has been alleged. No defence evidence has been produced by the accused. The police party was on investigation of some other case and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. No material contradictions or discrepancies have been pointed out in the statements of the PWs at the time of arguments. The PWs have consistently deposed regarding the prosecution version. Even, there is nothing in their cross-examinations, which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 17.12.2015 passed by learned Judge, Special Court, Ludhiana, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, learned counsel for the appellant contended that appellant is a widow lady, first offender and he also contended that the recovery

from the accused-appellant falls under category of non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone imprisonment of four months and nineteen days out of the actual sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 kgs. poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by her and further the fine is also reduced to ₹1000/- from ₹10,000/- and in default of payment of fine, the appellant is directed to undergo rigorous imprisonment for a period of 15 days.

Accordingly, present criminal appeal stands partly allowed.

Appellant Karamjit Kaur, who is in custody, be released forthwith if her custody is not required in connection with any other case, subject to payment of fine.

April 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE