

CRA-S-687-SB-2016

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

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Date of Decision: 23.09.2016

Harwinder Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Parminder Singh Sekhon, Advocate,
for the appellant.

Mr. Varun Sharma, Assistant Advocate General, Punjab.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 21.12.2015 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 one year and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, '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:-

“As set up by the prosecution, on 18.03.2013, ASI Prem Singh along with HC Ravinder Singh, HC Sukhdev Singh and other police officials was present at village Nardu near the bridge of Bhakra canal

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in connection with patrolling. The Investigating Officer received a secret information that Harwinder Singh son of Lal Singh resident of Jattanwala Chauntra, Patiala i.e. the present accused will come on foot from village Nardu towards village Kolemajra to supply the poppy husk and if the checking point is laid, then, he can be apprehended along with heavy quantity of poppy husk. On the basis of this information, the police party started checking on the bridge of Bhakra canal in the area of village Nardu. In the meantime, one Manjit Singh son of Jagpal Singh arrived at the spot, who was joined in the police party. Then, from the side of village Nardu, one person carrying a plastic bag on his head came. On seeing the police party, he tried to turn towards the fields. On the basis of suspicion, the said person was apprehended by the Investigation Officer. The Investigating officer verified his identity, who disclosed his name as Harwinder Singh son of late Lal Singh resident of 463/7, Mohalla Jattanwala Chauntra, Patiala. The Investigating Officer gave his introduction to the accused and told him that he suspects some contraband in his possession or in the plastic bag and that he wants to conduct his search and that of the plastic bag. He also apprised the accused about his legal right to be searched in the presence of a Gazetted Officer or a Magistrate, who can be called at the spot, but, the accused reposed confidence in the Investigating Officer. A consent memo of the accused was prepared, which was signed by accused and attested by HC Ravinder Singh and HC Sukhdev Singh. From the search of the plastic bag, poppy husk was found in the same. Two samples of 250 grams each were taken out from the recovered poppy husk and the remaining poppy husk on weighment came out to be 19.5 Kg. The

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samples and remaining poppy husk were sealed by the Investigating Officer in separate parcels with his seal bearing impression 'PS'. Specimen seal was separately prepared and the seal after its use was handed over to independent witness Manjit Singh. The case property was taken into police possession vide a recovery memo attested by the above said witnesses. A ruqa was sent by the Investigating Officer to P.S. Kheri Gandian and on the basis of the same, a formal FIR was registered by MHC Balkar Singh. Rough site plan of the place of recovery was prepared. The accused was arrested and grounds of arrest were conveyed to him. On personal search of the accused, currency notes worth ₹250/- and one mobile phone were recovered, which were taken into police possession vide a separate memo. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Cr.P.C. He also sent the report U/s 57 of the NDPS Act. On return to the police station, the case property along with the accused, articles of jamatalashi and the witnesses were produced before SI Baldev Singh, who was working as the officiating SHO of P.S. Kheri Gandia. SI Baldev Singh verified the facts of the case from the accused and the witnesses and affixed his seal bearing impression 'BS' on the case property as well as on the specimen seal chit and thereafter, the officiating SHO deposited the case property with MHC Balkar Singh. On the next day i.e. 19.03.2013, SI Virinder Singh prepared the inventory and application for judicial remand of the accused and handed over the same to the Investigating Officer. The Investigating Officer collected the case property from MHC Balkar Singh and produced the accused in the court of Ld. JMIC, Rajpura. The Ld. Magistrate compared the seals with the inventory and

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passed the judicial order Ex.PL. The Investigating Officer deposited the case property i.e. one sample parcel and one bulk parcel in the Judicial Malkhana, Patiala and the second sample parcel with the MHC on his return to the police station. The sample was sent to the office of Chemical Examiner, Punjab, Kharar and on receipt of report of said Laboratory and completion of the investigation and other necessary formalities, the challan against the accused was prepared and presented in the court by SI Virinder Singh.”

After necessary investigation, challan was presented against the accused-appellant. 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 HC Juhar Singh, PW-2 SI Baldev Singh, the officiating SHO, PW-3 SI Prem Singh, investigating officer, PW-4 MHC Balkar Singh and PW-5 HC Ravinder Singh. Thereafter, learned Additional Public Prosecutor for the State tendered into evidence the report of Chemical Examiner, Ex.PM and closed the evidence of the prosecution by making a separate statement. 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.

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In his defence, the accused-appellant examined DW-1 Constable Jagjit Singh.

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.

From the record, I find that as per the prosecution version, poppy husk weighing 20 kgs was recovered from the present appellant. The prosecution has duly proved its case by leading cogent evidence. The mandatory provisions of the NDPS Act have been complied with. Link evidence is also complete. All the prosecution witnesses have consistently deposed regarding the prosecution version and no material discrepancy or improvement has been pointed out at the time of arguments, rather learned counsel for the appellant has not challenged the conviction of the appellant. Resultantly, the judgment of conviction dated 21.12.2015 passed by learned Judge, Special Court, Patiala is upheld.

As regarding the prayer for reducing the sentence, learned counsel for the appellant contended that appellant is aged more than 52 years, first offender, poor person and sole bread earner of his family. Learned counsel for the appellant contended that 20 kgs of poppy husk has been recovered from the appellant, which falls under non-commercial quantity and the appellant has already undergone actual sentence of 05 months and 02 days. He further contended that the appellant is suffering from criminal proceedings since 2013.

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Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is more than 52 years old, poor person, only bread earner of the family and further in view of the fact that appellant has already undergone actual sentence of more than five months out of the total sentence and the appellant is facing long protracted criminal proceedings since March, 2013 i.e. for the last more than three years, and keeping in view the fact that recovery from the accused-appellant falls under non-commercial quantity i.e. 20 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 sentence will remain the same. The appellant is directed to pay the fine within one month from receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Harwinder Singh is on bail, his bail/surety bonds stand discharged.

23.09.2016

parveen kumar

(INDERJIT SINGH)
JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No