

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

**Crl. Appeal No.S-803-SB of 2016 (O&M)
Date of Decision: October 18, 2016**

Lal Singh

...Appellant

VERSUS

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Kumar, Advocate
for the appellant.

Mr.A.S.Sullar, Addl. Public Prosecutor
for the respondent-U.T. Chandigarh.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of U.T. Chandigarh, challenging the judgment of conviction and order of sentence dated 15.01.2016 passed by learned Judge, Special Court, Chandigarh, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one and half years and to pay fine of ₹5000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 20 of the NDPS Act.

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

“2. *The prosecution story, in brief, is that on 18.2.2015 Sub*

Inspector Rajbir alongwith Constable Ashok, Constable Anil, Constable Jagdish and Constable Harmesh were on patrolling near Bachan Dhaba, Old Ropar Road, Manimajra, Chandigarh. They held a routine naka there in order to check the passers-by and the vehicles for prevention of crime of theft and snatching. At about 3.40 pm, accused was seen coming from the side of Mansa Devi road carrying one polythene in his right hand. On seeing the police party, he tried to throw the polythene. On suspicion, the accused was apprehended. On checking the polythene of the accused, charas was recovered. Sub Inspector tried to join some passers-by in the investigation of the case, but nobody was ready to join. The accused could not produce any licence or permit for keeping the same in his possession. The recovered charas was weighed at the spot and it turned out to be 260 grams. Out of total recovered quantity, two samples each weighing 50 grams were taken out and kept in plastic containers, which were wrapped with white cloth and sealed with the seal of 'RS' at two places. The remaining charas was kept in the same bag and the same was converted into sealed parcel bearing seal of 'RS' at two places. Separate sample seal was also prepared. CFSL form was also filled in on the spot and seal after use was handed over to Constable Jagdish. All the three sealed parcels alongwith sample seal were taken in police possession vide seizure memo Exhibit P4.

3. Sub Inspector Rajbir scribed ruqa, which he sent to the police station through Constable Ashok for registration of the First Information Report Exhibit P6, which was recorded by Sub Inspector Balbir Singh.

4. It is further case of the prosecution that on information being sent to the police station about the recovery of charas, Assistant Sub Inspector Narinder Pal Singh came to the spot for further investigation. Sub Inspector Rajbir disclosed the facts to Assistant Sub Inspector Narinder Pal Singh and also handed over to him three sealed parcels alongwith the relevant documents. Assistant Sub Inspector Narinder Pal Singh himself verified the facts at the spot.

5. Assistant Sub Inspector Narinder Pal Singh prepared the rough site plan Exhibit P9 of the spot and arrested the accused vide personal search memo Exhibit P8 and completed other formalities at the spot. Assistant Sub Inspector Narinder Pal Singh alongwith members of the police party headed by Sub Inspector Rajbir and the accused came to the police station and also brought the case property with him. Inspector Jasbir Singh, Station House Officer, was present in the police station. Assistant Sub Inspector Narinder Pal Singh produced before the Station House Officer the three sealed parcels alongwith the accused, sample seal and other documents and also disclosed the complete facts of the case. Inspector Jasbir Singh after verification of the facts put one seal of 'JS' on each parcel. He also attested each parcel alongwith sample seal with his signatures. Sample seal of 'JS' was also prepared.

Inspector Jasbir Singh then handed over the case property alongwith sample seals to MMHC Sakattar Singh for its deposit in the malkhana.”

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 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Yash Pal, Draftsman, PW-2 Inspector Yashpal, SHO, PW-3 Head Constable Sakattar Singh, PW-4 SI Rajbir, PW-5 Constable Harmesh Lal, PW-6 ASI Narinder Pal Singh and PW-7 Constable Dei Ram.

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 260 grams of charas has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2015. He further contended that the appellant is

first offender and only bread earner of the family. He further contended that accused-appellant has already undergone 4 months 23 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 15.01.2016 passed by learned Judge, Special Judge, Chandigarh, 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 criminal proceedings since 2015 and further in view of the fact that appellant has already undergone actual sentence of 4 months and 23 days as on 23.04.2016 out of the total sentence (the date on which his sentence was suspended by this Court) and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 260 grams of charas, 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.

The appellant is directed to pay the fine within one month from the date of 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 Lal Singh is on bail, his bail/surety bonds stand discharged.

October 18, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No