IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-843-SB of 2016 (O&M)
Date of Decision: August 30, 2016

Hardeep Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Partap S. Pathania, Advocate
for the appellant.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

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INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 05.11.2015 passed by learned Judge, Special Court, Mansa whereby the appellant along with other co-accused was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo 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, Mansa, are as under:-

> *"That, on 19.08.2012, SI Gurcharan Singh, along with his police companions, in connection with patrolling duty and checking of bad elements, was proceeding from City Mansa towards Thuthianwali Road. When the police party reached the Ahata of cattle market, then three persons were spotted sitting*

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under the Kikker tree along with the plastic bag lying in between. The bag was filled with something and all the three young persons surrounded the bag. They were taking out something from the bag and put the same in the plastic lifafa. On seeing the police party, the aforesaid persons got perplexed and at once stood up. On suspicion, SI Gurcharan Singh with the help of his companions, intercepted the aforesaid persons. The mouth of the plastic bag was open and poppy husk was visible in the same. Some poppy husk was also smeared on the mouth of the bag. On inquiry, the aforesaid persons disclosed their names as "Gurpreet Singh alias Nikka", "Raj Kumar alias Raju" and "Hardeep Singh" and they also disclosed their other particulars. Effort was made to associate the independent witness but none was available. Then, from the plastic bag, one sample of 100 grams was separated and the residue poppy husk weighed to be 20 Kgs. Separate parcels of the sample and the residue poppy husk were prepared, which were sealed by SI Gurcharan Singh, with his seal bearing impressions 'GS'. Sample seal was separately prepared and all the aforesaid articles were taken into possession, vide separate memo. Ruqa was sent to the Police Station, on the basis whereof, a case was registered against the accused under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985. Various other proceedings were conducted at the spot. On return to the Police Station, Investigating Officer had retained the case property with himself as SHO Harpal Singh was away from the Police Station. During the course of investigation, sample parcel was sent to the office of the Chemical Examiner, Kharar and the latter, vide its report, opined the sample to be "Chura Poppy Heads".

On completion of the investigation, all the accused were sent up to face trial for the commission of an offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 by the police of Police Station, City Mansa, District Mansa."

On presentation of challan against accused-appellant and other co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and other co-accused were charge-sheeted under Section 15 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Gurcharan Singh, Investigating Officer, PW-2 Constable Navdeep Singh

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and PW-3 Head Constable Gurdev 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.

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. Further, I find that every effort was made to join independent witness but nobody

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agreed to join the investigation. 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 05.11.2015 passed by learned Judge, Special Court, Mansa, 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 first offender, only bread earner of the family and the recovery from the appellant falls under non-commercial quantity and the appellant has undergone actual sentence of about seven months. He further contended that the appellant is suffering from criminal proceedings since 2012.

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 further in view of the fact that appellant has already undergone actual sentence of 11 months and 6 days out of the total sentence and the appellant is suffering from long protracted criminal proceedings since 2012 i.e. for the last four years, and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 kgs. 100 grams of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and

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in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Hardeep Singh, who is in custody, be set as liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

August 30, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**

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