

MAMTA MALHOTRA
2016.06.03 17:10

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

**Criminal Appeal No.S-863-SB of 2016 (O&M)
Date of decision: 31st May, 2016**

Mohan Lal

...Applicant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr. Vikramjit Singh, Addl. A.G., Haryana,
for the respondent(s)-State.

INDERJIT SINGH, J.

Appellant Mohan Lal has preferred this appeal against respondent-State of Haryana, challenging the impugned judgment of conviction dated 10.02.2016 and order of sentence dated 11.02.2016, passed by the learned Special Judge, Ambala, vide which he has been held guilty for the commission of offence punishable under Section 15 of the Narcotic Drugs & Psychotropic Substances Act (in short 'the Act') and convicted and sentenced him to undergo rigorous imprisonment for a period of 01 year and 06 months and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 03 months under the aforesaid Section.

Notice of motion was issued. Learned State counsel appeared and contested the instant appeal. Record of the learned Court below was also received.

Brief facts of the prosecution case, as mentioned in the impugned judgment dated 10/11.02.2016 are as under:-

“Necessary facts leading to prosecution case are that on 29.06.2013, ASI Rajinder Singh in the company of other police officials ASI Suresh Kumar, EASI Radhey Shyam and EHC

Tarsem Kumar were present at Sultanpur Chowk, in connection to detect the crime and checking the vehicles. During checking of vehicles, one person on scooter came from Ambala-Chandigarh side having plastic bag putting in his legs in the front side of his scooter, which was stopped and checked by them, meanwhile, plastic bag fell down from the scooter and scooter driver started to leave the place by running the scooter. ASI Rajinder Singh Nabbed him with the help of police officials and on suspicion, proceeding was initiated. Notice under Section 52 NDPS Act Ex.P13 was served upon accused. IO ASI Rajinder Singh requested Pawan Kumar Inspector/SHO PS Baldev Nagar through telephone message to reach the spot and on his request, after sometime, he reached the spot. Recovered plastic bag was opened and found poppy husk therein. On inquiry, rider of said scooter disclosed his identity as Mohan Lal s/o Bariyam Chand, caste Noongar, r/o H.No.3540 B/12, Manmohan Nagar, PS Baldev Nagar. On weighing of poppy husk, it came out 6 kgs., out of which, two samples of 500 grams each were separated and converted into parcels and remainder was converted into parcel and sealed with the seal of "RS" and prepared the impression sheet. Recovered poppy husk and scooter were taken into possession vide recovery memo. Test report Ex.P10 was prepared. Written intimation Ex.P11 was sent to PS Baldev Nagar by EHC Tarsem for registration of case. Recovery site plan Ex.P12 was prepared. IO produced before him accused Mohan Lal, case property, witnesses and one

vehicle i.e. scooter alongwith Notice u/s 55 NDPS Act Ex.P14.

SHO Verified the facts from the accused, witnesses and found the version as correct. He affixed his one seal each having impression "PK" on case property, sample parcels and impression sheet. He also made his endorsement Ex.P5 on report u/s 55 of NDPS Act. SHO directed IO to deposit the case property with MHC and put the accused in police lock up and on his direction, IO deposited the case property with MHC and put the accused in police lock up. Notice u/s 57 NDPS Act Ex.P15 was prepared and sent to DCP Ambala. Thereafter, accused and case property was produced before learned Illaqa Magistrate with application u/s 52 A NDPS Act. The learned Illaqa Magistrate checked the sealed parcel. On the direction of learned Illaqa Magistrate, Gulshan Gulati, Photographer clicked the photographs inside the Court and accused was sent to judicial lock up. Case property and one sample parcel with one sample seal was deposited with MMJ and one sample parcel with one sample seal was deposited with MMHC for sending the same to FSL Madhuban. Investigation was carried out. On culmination of investigation, final report under Section 173 Code of Criminal Procedure was submitted."

In order to prove its case, prosecution examined **PW1** Constable Rahul Kumar, formal witness, who tendered into evidence his affidavit Ex.P1. **PW2** Head Constable Sahab Singh is also a formal witness, with whom the case property was deposited. **PW3** Harvinder Singh proved the order dated 30.06.2013 Ex.P3, passed by the Court of learned ACJM,

Ambala. **PW4** Gulshan Kumar Gulati, photographer, proved the photographs Ex.P4. **PW5** Pawan Kumar, SHO, mainly deposed regarding the verification etc. **PW6** Som Nath (retired Sub Inspector) mainly deposed regarding the registration of formal FIR. **PW7** Inspector Randhir Singh prepared the report under Section 173 Cr.P.C. **PW8** ASI Rajinder Singh, Investigating Officer, mainly deposed regarding conducting the investigation of the case. **PW9** ASI Suresh Kumar, who is the recovery witness, deposed as per prosecution version. **PW10** ASI Birbhan deposed regarding the report under Section 57 of the Narcotic Drugs & Psychotropic Substances Act. As per prosecution version 06 kg. poppy husk was recovered from the accused.

The learned trial Court, after appreciation of evidence convicted and sentenced the accused as stated above.

The learned counsel for the appellant mainly argued on one point that neither any independent witness has been joined by the police party nor examined in the Court, therefore, testimonies of police officials alone cannot be believed.

On the other hand learned State counsel contended that case of the prosecution has been duly proved. PWs have consistently deposed regarding the prosecution version and link evidence is complete. Mandatory provisions under the Act have been complied with.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

It is settled law that testimony of police official is as good as of any other witness unless some enmity or motive is alleged or proved. In the present case, no evidence has been produced by the accused to prove the

enmity or motive of the police officials. PWs have consistently deposed as per prosecution version. No material contradictions or improvements have been pointed out in their statements. Link evidence is complete. Mandatory provisions under the Narcotic Drugs & Psychotropic Substances Act, have been complied with.

Therefore, from the above discussion, this Court finds that the findings returned by the learned Court below are correct and as per law and evidence and the conviction of the appellant under Section 15 of the Act is upheld.

Learned counsel for the appellant, in the alternative, prayed for reduction of sentence. It is contended that appellant is a poor person; he is the only bread earner of the family; he is suffering from the long protracted criminal proceedings for the last 03 years; the recovery from the petitioner is 06 kg poppy husk and he is in custody since the decision of the case i.e. 10.02.2015.

Keeping in view the facts and circumstances of the case; the recovery effected from the accused and the facts that the appellant is a poor person and he is the only bread earner and the first offender, the sentence of the appellant is reduced to the period already undergone by him. The sentence of fine is also reduced to Rs.5,000/- instead of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 01 month.

With the aforesaid modification, the instant appeal is partly accepted.

31st May, 2016
mamta

(INDERJIT SINGH)
JUDGE