

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

Crl. Appeal No.S-916-SB of 2016 (O&M)
Date of Decision: November 28, 2016

Radhey Sham alias Godia

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manvinder Sidhu, Advocate
for the appellant.

Mr.Vikas Chopra, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 24.02.2016 and order of sentence dated 25.02.2016 passed by learned Sessions Judge, Sirsa, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo rigorous 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 Sessions Judge, Sirsa, are as under:-

“2. Briefly stated, the facts of the prosecution case are that on 19.05.2014, ASI Rampal (PW6) alongwith EASI Krishan Kumar (PW4) EHC Raghbir Singh, in official vehicle being driven by EHC Rai Sahab, were present at CNG Canal Bridge

in the area of Rania on patrolling and crime detection duty. In the meantime, a person was seen coming from the side of Dhani Satnam Singh by road having a plastic bag. On seeing the police party ahead, he immediately turned back and started walking briskly. On suspicion, he was apprehended by ASI Rampal with the help of accompanied officials. On enquiry, he told his name as 'Radhey Sham son of Mangal Ram, resident of Rampura Bishnoian.' Suspecting some narcotic substance in the plastic bag, ASI Rampal served notice Ex.PG upon the accused under Section 50 of the Act apprising him of his right to get the search conducted in the presence of a Magistrate or a Gazetted Officer, he can be called at the spot or he can be produced before him alongwith his plastic bag. In response to the notice, the accused submitted his reply Ex.PH reposing faith in ASI Rampal. Thereafter, ASI Rampal conducted search of the plastic bag of the accused which was found containing Choora Post. Two samples each weighing 100 grams were separated and the residue on weighment was found 4 kgs. 300 grams. The samples and the residue were converted into parcels which were sealed by the Investigating Officer with his seal 'RP' and were taken into his possession vide recovery memo Ex.PJ signed by accused and attested by the witnesses. Seal after use and retaining specimen impression was handed over to EASI Krishan Kumar. The Investigating Officer sent ruqa Ex.PB to the Police Station on the basis of which formal FIR Ex.PC was registered against the accused. He prepared rough site plan Ex.PO of the place of recovery with correct marginal notes and recorded statements of the witnesses under Section 161 Cr.P.C."

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 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 Constable Sham Sunder, PW-2 SI Jagdish Chander, PW-3 Inspector Dalip Singh, PW-4 EASI Krishan Lal, PW-5 Head Constable Anil Kumar and PW-6 ASI Rampal, Investigating Officer.

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 did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 4 kgs. 500 grams of choora post has been recovered from the accused-appellant, which falls under non-commercial quantity. He further contended that the appellant is first offender, poor person, only bread earner of the family and is suffering from criminal proceedings since 2014. He further contended that accused-appellant has already undergone actual sentence of more than one month.

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 24.02.2016 passed by learned Sessions Judge, Sirsa, 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 poor person, first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last about 2 years and further in view of the fact that appellant has already undergone actual sentence of more than one month out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 4 kgs. 100 grams of choora post, 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 Radhey Sham alias Godia is on bail, his bail/surety bonds stand discharged.

November 28, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No