

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

**Crl. Appeal No.S-4771-SB of 2015 (O&M)
Date of Decision: October 17, 2016**

Ram Karan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Aditi Girdhar, Legal Aid counsel
for the appellant.

Mr.Vikramjit Singh, Addl. 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 30.09.2015 and order of sentence dated 06.10.2015 passed by learned Special Judge, Ambala, 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 ₹30,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of four months under Section 15 of the NDPS Act.

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

“2. In nutshell, facts as put forth by prosecution in its case against the accused are that on 15.07.2013, SI Jiwan Singh alongwith ASI Jatinder Walia and Constable Om Parkash were going towards Platform No.1/A at Railway Station, Ambala Cantt. and a person having a bag on his back was seen going

towards Maal Godown by crossing the railway lines, who was in hurry. He was stopped at about 12.25 PM and on checking of his bag, four polythene bags containing Poppy Husk were recovered. The bag was bearing writing 'KR'. On enquiry, he disclosed himself as Ram Karan son of Sampuran Chand, aged 40 years, Caste Harijan, resident of village Budda Kheri, PS Panjokhra, District Ambala. During his personal search, one mobile of Silver-Black colour with two sims, key of a motorcycle, one purse containing railway ticket, driving license, ID of Indian Oil Corporation Limited and Rs.160/- in cash were recovered, which was taken into possession vide recovery memo. Independent persons were asked to join the proceedings, but all showed inability. Thereafter, accused alongwith recovered contraband and the articles recovered during personal search of accused were produced before SI Niyaz Mohammad, PS GRP Ambala Cantt. After verifying facts, SI Niyaz Mohammad opened the and found four polythenes containing Poppy Husk therein. The contraband was mixed and on weighment, it came to be 6 kgs. 200 grams. Two samples of 100 grams each were separated and converted in cloth parcels. The residue Poppy Husk alongwith the bag and all four polythenes was put in a plastic katta and converted in parcel. All parcels were sealed with seal bearing impression 'NM' and were taken in possession vide recovery memo. After use, the seal was handed over to SI Jivan Singh. On the basis of rukka, FIR was registered. Accused was arrested. On completion of investigation, final report under Section 173 Cr.P.C was presented in Court.”

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 EASI Om Parkash, PW-2 Inspector Subhash Chander, PW-3 SI Jiwan Singh Tawar, PW-4 ASI Chander Bhushan, PW-5 Vandana, Ahlmad, PW-6 SI Niyaz Mohammad, PW-7 ASI Budh Dev and PW-8 ASI Raj 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 that no independent witness was joined by the police party and there are only testimonies of police officials, which cannot be believed. She further argued that only one sample was taken after mixing the contents of all the four polythene bags. 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 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.

Further, I find that nothing has been pointed out in the FSL report that any other material was found in the sample. If the content was found as poppy husk, then it proves the case that poppy husk has been recovered from all the polythene bags carried by accused-appellant. On this ground, no reasonable doubt exists in the prosecution version.

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 30.09.2015 passed by learned Special Judge, Ambala, 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 poor person, 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 five months. He further contended that the appellant is suffering from criminal proceedings since 2013.

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 about 5 months out of the total sentence as on 15.01.2016, the date when the sentence of the appellant was suspended

during the pendency of the appeal and the appellant is suffering from long

protracted criminal proceedings since 2013 i.e. for the last three years, and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 6 kgs. 300 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 in default thereof, shall 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 Ram Karan is on bail, his bail/surety bonds stand discharged.

October 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No