

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

Crl. Appeal No.S-4858-SB of 2015 (O&M)

Date of Decision: August 12, 2016

Punjab Singh and another

...Appellants

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Minakshi Poswal, Advocate
for the appellants.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against the judgment of conviction dated 20.10.2015 and order of sentence dated 23.10.2015 passed by learned Addl. Sessions Judge-cum-Special Judge, Kurukshetra, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months each under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge-cum-Special Judge, Kurukshetra, are as under:-

“2. Briefly stating the allegations of the prosecution are that a police party headed by ASI Daljeet Singh, had apprehended

the accused Punjab Singh and Rajpal near village Talheri on the basis of suspicion, when they were going on a motorcycle. As per prosecution, on search of the bag, kept on the motorcycle, both the accused were found in possession of 4 kilograms of Poppy Straw. The Investigating Officer had conducted all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of site plan of place of recovery, preparation of various memos and recording of statements of witnesses u/s 161 Cr.P.C. On completion of usual formalities of investigation, report under Section 173 Cr.P.C. was prepared and presented in the court.”

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants 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 Constable Dalbir Singh, PW-2 SI Surender Singh, PW-3 Head Constable Satish Kumar, PW-4 Head Constable Malkeet Singh, PW-5 Constable Major Singh, PW-6 Constable Jora Singh, PW-7 Harbant Singh, PW-8 Inspector Vijay Malik, PW-9 SI Balwant Singh, PW-10 ASI Daljeet Singh and PW-11 Ms.Anjali Jain, CJM, Gurgaon.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent.

In defence, accused-appellants examined DW-1 Harbans Singh and DW-2 Daler Singh, Sarpanch.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that 4 kgs. of poppy straw has been recovered from the accused-appellants, which falls under non-commercial quantity. The appellants are suffering from criminal proceedings since 2014. They are first offenders, poor persons and only bread earners of the family. He further contended that as per order dated 08.12.2015 suspending the sentence of the accused-appellants, they have already undergone about 3 months and 22 days of actual sentence till then.

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 appellants as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellants are first offender, only bread earners 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 appellants have already undergone actual sentence of about 3 month 22 days out of the total sentence till 08.12.2015 and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity

reduced to the sentence already undergone by them. The sentence of fine is also reduced and they are directed to pay fine of ₹2000/- each instead of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month each instead of two months. Fine be paid within one month.

Accordingly, present criminal appeal stands partly allowed.

Since, appellants Punjab Singh and Rajpal Singh are on bail, their bail/surety bonds stand discharged.

August 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No