

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-5089-SB of 2015 (O&M)
Date of Decision: March 02, 2016

Narender Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Balram Singh, Advocate
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 and order of sentence dated 23.11.2015 passed by learned Sessions 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 ₹6,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case are that on 11.03.2014, a secret information was received by ASI Vijay Kumar that Narender Kumar alias Kala is indulging in selling poppy husk and after some time, he will come from the side of Kala Amb with poppy husk

and if a raid is conducted, he can be apprehended. On receiving this information, ASI Vijay Kumar prepared notice under Section 42 of the NDPS Act and reached Loton Octroi Post, Naraingarh, where he asked the passers-by to join the investigation but none of them agreed. At about 6.50 P.M., a person having a plastic bag was seen coming from the side of Kala Amb, who was apprehended. He disclosed his name as Narender alias Kala. The accused was apprised of his legal right to get the search conducted in the presence of any Gazetted Officer or Magistrate and the accused desired to get the search conducted from some senior police officer. Thereafter, Sh.Mukesh Kumar, ACP Naraingarh was informed, who reached at the spot. On search as per law, poppy husk was recovered, which on weighment came to 3 kgs. 200 grams. Two samples of 200 grams each were separated and converted into sealed parcel and remaining poppy husk was converted into bulk parcel. The sample parcels and bulk parcels were sealed by Investigating Officer with seal impression 'VK'. ACP Mukesh Kumar also put his seal bearing impression 'SK'. Case property was taken into police possession. Ruqa was sent to the police station, on the basis of which FIR was registered. Accused was arrested. Statements of witnesses were recorded. On return to the police station, the case property along with the accused was produced before Inspector Sanjeev Malik, who after verifying the facts from the accused, affixed his seal bearing impression 'NS' on the case property. 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 ASI Surender Singh, who was with the police party, deposed regarding prosecution version. PW-2 ASI Karambir proved the notice Ex.P7. PW-3 Inspector Sanjeev Malik deposed that after verifying the case property, he also affixed seal on the parcels. PW-4 Inspector Janghser Singh deposed regarding preparing of report under Section 173 Cr.P.C. PW-5 Constable Devi Lal proved the photographs Ex.P9 to P14. PW-6 ESI Ram Pal deposed regarding delivery of Special Reports to Illaqa Magistrate. PW-7 Sh.Ajay Kumar, Criminal Ahlmad, proved orders Ex.P15 to Ex.P17. PW-8 Head Constable Parvesh Kumar and PW-9 Constable Sanjeev Kumar, are formal witnesses, who tendered into evidence their affidavits Ex.PW8/A and Ex.PW9/A respectively. PW-10 P/SI Mahabir deposed regarding registration of the FIR. PW-11 ASI Vijay Kumar, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-12 ACP Mukesh Kumar, deposed regarding the recovery from the accused in his presence.

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.

Notice of motion was issued and learned State counsel appeared and contested the appeal.

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. No defence evidence has been produced by the

accused. It is in the statement of PW-11 ASI Vijay Kumar that every effort was made to join independent witness but nobody agreed to join the investigation. Moreover, PW-12 ACP Mukesh Kumar, who is a Gazetted Officer also deposed regarding the recovery from the accused. 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 23.11.2015 passed by learned Sessions 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 a poor person and has three children to look after. He further contended that appellant is first offender and only bread earner of the family. He also contended that the recovery from the accused-appellant falls under category of non-commercial quantity.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is poor person and only bread earner of the family and has three children and in view of recovery of 3 kgs. 200 grams poppy husk only and further in view of

the fact that appellant has already undergone 2 months and 8 days out of the actual sentence, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and default sentence shall remain the same. The appellant is directed to deposit the fine within a period of one month, if already not paid, otherwise, the trial Court would take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, the appellant Narender Kumar is on bail, his bail/surety bonds stand discharged.

March 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE