

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-5090-SB of 2015 (O&M)
Date of Decision: March 02, 2016

Krishan Lal

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tejnder Pal Singh, Advocate
for the appellant.

Mr.Brijesh Sharma, Asstt. 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 08.09.2015 passed by learned Addl. Sessions Judge, Karnal 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 ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 20 of the NDPS Act.

The brief facts of the prosecution case are that on 21.06.2012, ASI Shree Kant along with other police officials was on patrol duty. A person was seen coming from the side of Pal Nagar.

On seeing the police party, said person turned back started walking

briskly. On suspicion, he was apprehended and he disclosed his name as Krishan Lal. 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 Investigation Officer. On search as per law, charas was recovered, which on weightment came to 115 grams. Two samples of 5 grams each were separated and put into small plastic boxes and remaining charas was converted into bulk parcel. The sample parcels and bulk parcels were sealed by Investigating Officer with seal 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/SHO Shree Dutt, who after verifying the facts from the accused, affixed his seal bearing impression 'SD' 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 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Ravinder Kumar, formal witness, who tendered into evidence his affidavit Ex.P1. PW-2 ASI Satya Parkash mainly deposed regarding

recording of FIR. PW-3 Constable Amardeep deposed regarding delivering of Special Report to Illaqa Magistrate. PW-4 Lady Head Constable Sunita deposed regarding depositing of sample with the FSL Madhuban. PW-5 ASI Shree Kant, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-6 Head Constable Baljit Singh, recovery witness, deposed regarding the recovery from the accused. PW-7 Inspector/SHO Shree Dutt, who deposed that after verifying the contents, he also affixed his seal on the parcels. PW-8 Madan Pal, Reader to CJM proved the application under Section 52-A of NDPS Act.

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. The police party was on patrol duty and the recovery from the accused is sudden and by chance. There was no opportunity with the police party to join the independent witness. 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

08.09.2015 passed by learned Addl. Sessions Judge, Karnal 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 has three children and he is suffering from long protracted criminal proceedings since 2012 and further in view of the fact that appellant has already undergone 4 months and 27 days out of the actual sentence, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine is also reduced and the appellant is directed to pay a fine of ₹5000/- instead of ₹10,000. 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 Krishan Lal is on bail, his bail/surety bonds stand discharged.

March 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE