

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

Crl. Appeal No.S-5398-SB of 2015 (O&M)
Date of Decision: May 25, 2016

Prem Singh alias Prema

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gursimran Singh Bawa, Advocate
for the appellant.

Mr.P.S.Grewal, Deputy Advocate General, Punjab
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 24.11.2015 passed by learned Addl. Sessions Judge, Amritsar, 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 ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 473 IPC.

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

“Brief facts of the prosecution case are that on 25.07.2014, ASI Harjit Singh along with HC Karamjit Singh no.1931, HC Harjinder Singh no.3404 and C Shamsher Singh no.2133 was going towards Railway bridge via strip of canal in connection

with patrol duty and when the police party reached at some distance away from Railway bridge, a muslim fashion person was seen coming from the side of canal strip on a blue black colour motorcycle make Splendour Plus bearing registration number plate PB-02-AZ-3762. ASI Harjit Singh gave a signal to stop him on the basis of suspicion, on which he tried to turn towards back side, but motorcycle slipped and he fell down. ASI Harjit Singh captured him with the help of other police officials and on inquiry he introduced himself as Prem Singh @ Prema son of Jagir Singh, resident of house no. 3307/18, I/S Gate Hakima, Amritsar. On search of accused by ASI Harjit Singh, accused extracted a poly bag containing intoxicant powder from the right side pocket of his trouser and tried to throw it. ASI Harjit Singh took it into possession. One sample of 10 gm intoxicant powder was drawn out of it and the remaining on weighing came out 100 gm. Both the above said sample and remaining bulk of intoxicant powder were sealed by ASI Harjit Singh with his seal bearing impression 'HS' in two different parcels. Form M-29 was prepared at the spot. Sample seal was prepared separately and seal after use was handed over to HC Karamjit Singh. Accused has not produced any document regarding ownership of Motor cycle. The above said sample parcel, bulk parcel, sample seal impression, Form M-29 and Motor cycle make Splendor Plus bearing registration number plate PB-02-AZ-3762 were taken into possession vide separate recovery memos in the presence of the witnesses. Ruqa was sent to the police station for registration of case against the accused, on the basis of which a formal FIR was recorded. Rough site plan of the place of recovery was prepared at the spot and statements of witnesses under section 161 Cr.PC were recorded. On coming back to the police station, sample parcel, bulk parcel along with sample seal, Form M-29 and Motor Cycle were handed over to SHO Kuldip Singh, who after checking the bulk parcel and sample parcel sealed the same with his seal bearing impression 'KS' and kept it into double lock of the police malkhana. Motorcycle was deposited with MHC in police malkhana. Bulk parcel and sample parcel of intoxicant powder sealed with seal bearing impressions HS and KS along with sample seal and Form M-29 were produced before Ld. Ilaqa Magistrate and as per the order of the Ld. Magistrate, bulk parcel was deposited in judicial malkhana, whereas sample parcel was sent to the office of Chemical Examiner for Chemical analysis through HC Bikramjit Singh. Report of DTO office Amritsar was called regarding motorcycle bearing registration no. PB-02-AZ-3762 by ASI Harjit Singh on 04.08.2014 by moving an application in this regard, on which it was found that registration number plate bearing no.PB-02-AZ-3762 affixed on the motorcycle was fake as actual number allotted to the said motorcycle was PB02-BK-7982 and the aforesaid number was allotted to a motorcycle make HUNK registered in the name of Karam Chand son of Pritam Chand

r/o 2146/14, Gali Pippal Wali, Gate Hakima, Amritsar. Thereafter offence under section 379/411/420/473 IPC was added. After receiving report of chemical examiner and completing the investigation, instant challan was presented in the court against accused.”

After necessary investigation, 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 22 of the NDPS Act and 411, 420 and 473 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Karamjit Singh, PW-2 Jaspal Singh, PW-3 Inspector Kuldeep Singh, PW-4 Gaurav Saini, PW-5 ASI Harjit Singh, PW-6 Head Constable Talwinder Singh and PW-7 Ms.Sawinder Kaur, Clerk, DTO Office.

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 that the appellant has already been acquitted in the main offence, therefore, he should be also acquitted under Section 473 IPC as the witnesses

are the same and their statements have not been relied upon for the offence under the NDPS Act and regarding stealing of property i.e. motorcycle. 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. 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, the appellant has been acquitted under the provisions of NDPS Act for non-compliance of provisions of Section 50 of the Act, which are mandatory in nature. The appellant has also been acquitted under Section 411 IPC as the ownership of the motorcycle has not been proved and the Court found that prosecution has not proved the guilt regarding keeping of stolen property i.e. motorcycle.

From the record, I find that the accused-appellant was apprehended while going on motorcycle. The motorcycle was bearing registration No.PB-02-AZ-3762, but actually the allotted registration number of the motorcycle was PB-02-BK-7982. The Clerk of DTO office has been examined and the Investigation Officer and other witnesses have proved the recovery and the fact that motorcycle was having fake registration number plate.

In view of the above discussion, I find that the prosecution has duly proved the guilt of the accused under Section 473 IPC by leading cogent evidence and the findings given by learned Addl. Sessions Judge, Amritsar are correct, as per evidence and law and do not require any interference from

this Court. Therefore, the judgment of conviction dated 24.11.2015 passed by learned Addl. Sessions Judge, Amritsar is upheld.

As regarding the alternative prayer, learned counsel for the appellant contended that appellant is first offender, only bread earner of the family and he is suffering from criminal proceedings for the last about two years.

Keeping in view the facts and circumstances of the present case and the fact that appellant is a poor person, young man of 26-27 years of age and in view of the fact that the appellant is suffering from long protracted criminal proceedings since 2014 i.e. for the last about two years, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of six months instead of one year under Section 473 Cr.P.C. However, the sentence of fine and in default thereof, will remain the same.

With the above-said modification in the sentence, the present appeal stands dismissed.

As appellant Prem Singh alias Prema is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

May 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE