

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

(1) Crl. Appeal No.S-782-SB of 2014 (O&M)

Parveen Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

(2) Crl. Appeal No.S-1122-SB of 2014 (O&M)

Satpal Soni alias Kabri

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: August 31, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Ganeriwala, Advocate
 for the appellants.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

By this common judgment, two above-said connected appeals arising out of the same judgment, are being decided.

Accused-appellants Parveen Kumar and Satpal Soni alias Kabri have filed these appeals against the judgment of conviction and order of sentence dated 24.01.2014 passed by learned Special Judge, Ferozepur, whereby they were held guilty and convicted and sentenced to undergo

rigorous imprisonment for a period of ten years each and to pay a fine of ₹1 lac and in default of payment of fine to further undergo rigorous imprisonment for a period of two years each under Section 21 (c) of the NDPS Act.

The brief facts of the prosecution case are that on 19.06.2000, Inspector Satpal Singh, posted as SHO, Police Station Khuian Sarwar, along with other police officials was on patrol duty in the area of village Waryam Kherha to Shergarh on government vehicle. At about 4.00 P.M., from the side of Shergarh, a Hero Honda motorcycle came on which accused Parveen Kumar and Satpal were sitting. On seeing the police party, they threw the motorcycle and tried to slip away but were apprehended and they disclosed their names as Parveen Kumar and Satpal. Inspector Satpal Singh informed the accused of their legal right to have their search from a Gazetted Officer and Magistrate. Accused reposed confidence in the Investigation Officer. On search, as per law, from the long pocket of the shirt of the accused Satpal, a polythene bag tied with thread was recovered containing the smack. A sample of 5 grams was separated and converted into parcel and sealed with the seal 'SS'. The remaining smack came 305 grams on weighment and converted into parcel and sealed with the seal 'SS' and the case property was taken into possession. Recovery memo was prepared. Ruqa was sent to the police station, on the basis of which, FIR was registered. Statements of witnesses were recorded. Accused were arrested. After necessary investigation and after receiving the report from chemical examiner, the challan was presented against the accused-appellants.

On presentation of challan against accused-appellants, copies of

Cr.P.C. Finding prima facie case, the accused-appellants were charge-sheeted under Section 21 (c) of the NDPS Act and in the alternative, under Section 8(c) of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Paramjit Singh, who was the recovery witness and was in the police party of SHO Satpal Singh. He deposed regarding the recovery as per the prosecution version. PW-2 ASI Kashmiri Lal, mainly deposed that on 26.06.2008, he received the sample parcel along with CFSL form and specimen seal/chit and after forwarding from the office of SSP, Ferozepur, deposited the same in intact condition with Chemical Examiner on the next day. PW-3 Inspector Satpal Singh, Investigating Officer, deposed regarding the investigation conducted by him in the present case. PW-4 ASI Jalandhar Singh is also recovery witness, who was with the police party and also deposed regarding the prosecution version. After tendering the report of motorcycle, the evidence was closed.

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. They further deposed that no recovery was made from them and they did not commit any offence.

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 appellants

argued only on one point that FIR is of the year 2008 i.e. before notification

of 2009, vide which it was notified that total quantity is to be considered for the purpose of commercial and non-commercial quantity case. He argued that the present case was registered before that notification, in which only salt is to be considered for holding whether the case falls under commercial or non-commercial quantity. Learned counsel for the appellants further argued that the recovery effected from the present appellants falls under non-commercial quantity, therefore, he prayed that the sentence imposed upon the appellants be reduced. He did not argued anything qua the conviction of the appellants.

On the other hand, learned State counsel argued that conviction and sentence of the appellants are correct and as per evidence and law.

After hearing learned counsel for the appellants as well as learned State counsel and after going through the record, I find that PWs including the Investigating Officer and recovery witness, have consistently deposed regarding the recovery effected from the accused-appellants. Link evidence is complete. All the mandatory provisions of NDPS Act have been complied with. The prosecution has duly proved its case by leading cogent evidence. Therefore, the judgment of conviction dated 24.01.2014 passed by learned Special Judge, Ferozepur, is correct, as per law and the same is upheld.

As regarding the fact, whether recovery effected from the appellants falls under commercial or non-commercial quantity, learned counsel for the appellants relied upon the judgment passed by this Court in ***Sarabjit Kaur vs. State of Punjab, 2011(2) RCR (Criminal) 119***, in which the petitioner was found in possession of 300 grams of smack and as per

to 151 grams, which is non-commercial and it is held that petitioner can be charged only for 151 grams and not of 300 grams of smack. Learned counsel for the appellants also relied upon the judgment passed by Division Bench of this Court in ***CRA No.195-DB of 2009 decided on 27.08.2013 titled as 'Shankar Singh vs. State of Haryana'***, in which Division Bench of this Court relied upon the law laid down by the Hon'ble Supreme Court in ***E.Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau, 2008 (5) Supreme Court Cases 161***, in which it is held that when any Narcotic Drug or Psychotropic Substance is found mixed with one or more neutral substance, the pure drug content of the Narcotic Drug or Psychotropic Substance shall be taken into consideration for the purpose of imposition of punishment. In the above-cited judgment, the law laid down in ***Harjit Singh vs. State of Punjab, 2011(4) SCC 441*** was also relied upon, in which it is held that notification dated 18.11.2009 cannot be applied retrospectively.

Keeping in view the above-cited law, I find that in the present case, the total quantity of smack recovered from the appellants is 310 grams. As per the report of the Chemical Examiner Ex.P13, Diacetylmorphine is 66.42%, which means that that recovery as per the salt is 206 grams, which falls under non-commercial quantity.

As per the custody certificate relating to appellant Parveen Kumar placed on record, he has already undergone actual sentence of 2 years 4 months and 12 days as on 02.02.2016, which now comes to about 2 years and 11 months and as per custody certificate relating to Satpal Soni alias Kabri, which is also placed on record, he has already undergone actual

sentence of 3 years 2 months and 18 days upto 09.02.2016, which now

comes to about 3 years and 9 months.

Keeping in view the fact that recovery effected from the present appellants falls under non-commercial quantity and the appellants have already undergone substantial period of sentence as stated above, the sentence imposed upon both the appellants is reduced to the sentence already undergone by them. Further, the sentence of fine is also reduced and they are directed to pay fine of ₹10,000/- each instead of ₹1 lac each and in default of payment of fine, to undergo rigorous imprisonment for a period of two months each instead of two years each.

Resultantly, the present appeals stand partly allowed.

August 31, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No