

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-No.2156-SB of 2003
Date of decision : 09.08.2016

Surinder Singh Matharoo @ Chhinda...Appellant
Versus
State of U.T. Chandigarh...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arshdeep Bhullar, Advocate for Mr.SPS Bhullar, Advocate
for the appellant.

Mr. G.S.Chahal, Addl.P.P.
for U.T.Chandigarh.

JITENDRA CHAUHAN, J.

The present appeal is arising out of the impugned judgment dated
23.10.2003, passed by the Session Judge, Chandigarh, whereby the accused
has been convicted and sentenced as under:-

Surinder Singh Matharoo @ Chhinda	Under Section 18 NDPS Act	To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.15,000/- , or in default of payment of fine, to further undergo rigorous imprisonment for a period of six months
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The brief facts of the present case as reflected in para No.2 of the
impugned judgment are reproduced as under:-

“On 22.02.2001, a police party headed by SI-
Hari Kumar including SI-Sarwan Singh, HC Jagdev
Singh, Constables Varinder Rana, Jaspal Singh and

Satpal was present near Petrol Pump of Sector 15 for patrol duty and detection of crime. Jaskanwar Pal Singh a public person was also with the police party. Soon after a secret information was received that Surinder Singh deals in opium and he is having opium in his possession and is proceeding towards village Khudda Lahora, U.T Chandigarh from Local Bus Stand, PGI to supply opium to other persons. Believing the secret information as true the police party had held a Nakabandi near 66 KV Sub Station. At about 4.20 p.m. accused appeared there having black coloured cloth bag on his shoulder from the side of PGI who was apprehended on suspicion who told his name as Surinder Singh Matharoo @ Chhinda. Accused was served notice under Section 50 of the NDPS Act offering him to be searched in the presence of a Magistrate or a Gazetted Officer or a Gazetted Police Officer. Accused through his reply desired to be searched in the presence of a Gazetted Police Officer. Sh.H.G.S.Dhaliwal, ASP was informed in this regard who soon after reached the place of recovery at about 5.30 p.m. Sh. HGS Dahliwal also asked the accused if he has any objection if his search is conducted in his presence. Accused gave his consent and the search of the accused was conducted. On search one kg. Opium wrapped in a polythene paper kept in a cloth bag was recovered. Out of it 50 gms. Opium was separated as a sample in a plastic box. Remaining case property was kept in a tin box. Both the parcels containing sample and the remaining case property were sealed with seal HK and were taken in police possession. SI Piara Lal was called for further investigation. The sample parcel, case

property accused and the witnesses were produced by SI Piara Lal before Inspector, SHO Satbir Singh on the same date who after verification affixed his seal SS upon the sample and the case property and got the same deposited with the MMHC. On these allegations after recording statements of the prosecution witnesses, preparing site plan, receiving report CFSL and completion of necessary investigation, the accused was challaned under Section 18 of the NDPS Act.”

On committal, the accused was charged with offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Ashok Kumar Dalela, Jr. Scientific Officer as PW-1; Constable Yash Pal as PW-2; Constable Pawan Kumar as PW-3, HC Jaspal Singh as PW-4; Constable Jaspal Singh PW-5; SI Hari Kumar as PW-6; SI Sukhwinder Singh as PW-7; Jaskaran Pal Singh as PW-8; SI Piara Lal as PW-9; Inspector Satbir Singh as PW-10 and Hargobinder Singh Dhaliwal S.P.as PW-11 whereas SI Sarwan Singh was given up as unnecessary.

The statement of the accused under Section 313 Cr.P.C was recorded. He pleaded innocence and alleged false implication. However, he did not lead any evidence in defence.

After hearing the Public Prosecutor for the State as well as the counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/appellant, as noticed at the outset.

Feeling aggrieved against the judgement and conviction and the order of sentence passed by the learned trial Court, the instant appeal has been filed by the accused/appellant.

The accused/appellant, had already undergone 2 years, 07 months and 28 days out of the substantive sentence of 04 years, at the time of filing of application for suspension of sentence on 30.10.2003, which was allowed by this Court on 19.12.2003. Learned counsel prays that a lenient view may be taken as regards the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of the appellant/accused and supported the judgement of conviction and order of sentence passed by the trial Court.

I have heard the arguments of the learned counsel for the parties and have carefully gone through the record of the case.

The prosecution case is fully proved by the statements of the prosecution. There is no flaw in the judgment of conviction. Thus, the present appeal as regard the judgement of conviction is concerned, is dismissed. Now this Court would deal with the quantum of sentence.

Accused-appellant Surinder Singh Matharoo @ Chhinda is stated to be a poor person as well as sole bread winner of his family. His family consists of his wife and two minor children.

The appellant has suffered agony of protracted criminal trial for more than 15 years. Accused-appellant comes from the lowest income group of the society and is the sole bread winner of his family. It shall not be in the interest of justice to send appellant to judicial custody, since he has joined

the mainstream of life after suspension of sentence in the year 2003. The appellant has neither misused the concession of bail nor he has repeated the offence. He is not involved in any other FIR.

Keeping in view the fact that in his absence his family would starve and would be exposed to unhealthy surrounding of slum areas, the sentence of imprisonment awarded to accused-appellant is hereby ordered to be reduced to the period already undergone.

Ordered accordingly.

However, the sentence of fine is enhanced by ₹15,000/- to be paid within two months from the date of receipt of certified copy of the order. Accused-appellant Surinder Singh Matharoo @ Chhinda is stated to be on bail. His bail bonds shall stand discharged.

It is made clear that if the enhanced amount of fine is not paid within the stipulated period, the present appeal shall be deemed to have been dismissed, without any notice.

(JITENDRA CHAUHAN)
JUDGE

August 09, 2016

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No