

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

CRA-S-1311-SB of 2004.

Decided on:-13.1.2016.

Mohinder Singh.

.....Appellant.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Ashu Kaushik, Advocate for the appellant.

Mr. Sultan Singh Gill, DAG, Punjab.

HARI PAL VERMA, J.

Mohinder Singh son of Nazar Singh, resident of village Ghaniawala, P.S. Sadar Kotkapura has filed the present appeal against judgment dated 17.2.2004 and order dated 19.2.2004 passed by learned Special Judge, Moga in case FIR No.212 dated 8.9.2000 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act), registered at Police Station, City Moga, whereby he was convicted under Section 18(c) of the Act and sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.20,000/- and in default to pay fine, to further undergo rigorous imprisonment for 4 months.

As per prosecution story, on 8.9.2000 when a police party

headed by Inspector Ram Parkash was going on Lal Singh road and reached the gate of cremation ground, they noticed a man coming from ahead, who was holding a bag of cloth in his right hand. On seeing the police party, he became perplexed and abruptly tried to turn back. On the basis of suspicion, Inspector Ram Parkash apprehended him with the help of co-officials. On being asked, he disclosed his name as Mohinder Singh (present appellant) son of Nazar Singh. The appellant was told that some intoxicating substance was suspected in the bag. The accused was informed that he had right to get the search of bag before a gazetted officer or some Magistrate and accordingly, the accused desired to get his bag searched before some gazetted officer. Consent memo was prepared and a message was sent to Paramdeep Singh Sandhu, S.P. (city), Moga to come on the spot, who reached after some time in his official gypsy along with his gunman. He introduced himself to the accused being S.P. (city) and the accused was asked as to whether he wanted to be searched before him or before a Magistrate. However, the accused gave his consent for search of his bag before him. Accordingly, the search was conducted which led to recovery of opium wrapped in polythene. On weighing, a total of 2 Kgs opium was recovered from the accused which was sealed out of which a sample of 10 Gms was drawn from such opium.

After conducting full fledged trial, the appellant was convicted and sentence by learned trial Court as mentioned hereinabove. However,

aggrieved with the same, the appellant has filed the present appeal.

Learned counsel for the appellant has contended that he does not challenge the conviction. However, the appellant has undergone imprisonment for more than 2½ years and the case relates to non-commercial quantity. Learned trial Court has awarded the sentence as if the quantity was commercial. He has further contended that as per the amendment in the Act vide Act No.9 of 2001, the punishment was to be awarded as per the amended Act. He has contended that the appellant has faced the agony of trial for the last more than 15 years as the FIR in question was registered as far back as on 8.9.2000. The appellant has undergone sufficient punishment and there is no other case pending against him.

In support of his contentions, learned counsel for the appellant has relied upon the judgments of this Court in ***Jagat Singh Versus State of Haryana 2015(1) RCR (Criminal) 837*** and ***Nishan Singh Versus State of Punjab 2011(3) Law Herald 1944*** where for having possession of 1 Kg Charas, the accused was convicted and sentenced to undergo RI for 10 years by the trial Court. However, this Court reduced his sentence to the period already undergone by him which was 3 years and 18 days.

On the other hand, learned State counsel has pleaded that the appellant was found in possession of 2 Kgs of opium. Though the same is non-commercial quantity, but the sentence awarded by the trial Court is just and appropriate and fully commensurate with his guilt.

I have heard learned counsel for the parties.

Learned counsel for the appellant has not challenged the conviction and, rather, confined himself to assail the order on quantum of sentence only. Even then this Court is required to satisfy itself as to whether the conviction of the appellant has rightly been recorded by learned trial Court or not. Therefore, this Court has re-scanned the material available on record.

As per the prosecution version, 2 Kgs of opium was found from possession of the appellant, but it has not been disputed at Bar that the said quantity does not fall within the definition of non-commercial quantity as the same is less than commercial quantity specified by the Central Government in its notification issued for this purpose. Thus, when the quantity recovered from the appellant was non-commercial, this Court while taking into consideration the incarceration and the fact that there is no other case pending against the appellant, can entertain his plea to reduce the sentence as undergone.

The appellant is more than 65 years of age. The quantity of contraband recovered from him is non-commercial and the affidavit of custody nowhere suggests any other case pending against him. He has undergone the agony of the proceedings for the last more than 15 years. As per his statement on the point of quantum of sentence recorded by learned trial Court, he is a first offender having 4 children and a wife dependent

upon him. He has mentioned therein that he is a poor man and lenient view may be taken against him. There is no material on file to show that after the present case, the appellant has indulged in any criminal activity or any other case under the Act. Thus in these circumstances, even the lenient view in the matter of sentence will suffice to meet the ends of justice. As per the custody certificate placed on record by learned State counsel, the appellant has already undergone imprisonment for 2 years 6 months and 21 days as against the awarded sentence of 4 years.

Thus, keeping in view my aforesaid discussion and taking into consideration *Jagat Singh's case (supra)*, the conviction of the appellant recorded by learned trial Court is hereby maintained. However, the order on quantum of sentence dated 19.2.2004 stands modified. The appellant is sentenced to the imprisonment already undergone by him i.e. 2 years 6 months and 21 days. He is also ordered to pay fine as imposed by learned trial Court. He is given time of one month from today to deposit the amount of fine with the learned trial Court failing which he will undergo rigorous imprisonment for a period of four months.

With the aforesaid modification in the quantum of sentence, the present appeal is hereby dismissed.

January 13, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE