

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

CRA-S-1451-SB of 2008(O&M)

Date of decision: 17.02.2017

Harwinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Inderjeet Sharma, Advocate for the appellant.

Mr. Luvinder Sofat, AAG, Punjab.
for the State.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 01.08.2008, passed by Special Judge, Moga, vide which the accused/appellant was convicted for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'the Act') and sentenced him to undergo rigorous imprisonment for a period of six months, and to pay a fine of ₹2000/- or in default of payment thereof, to further undergo RI for one month.

The prosecution case against the appellant is that on

09.06.2006, the appellant was apprehended for having been found in possession of 08 kgs and 250 gms of poppy straw, without any permit or licence.

On commitment, the accused was charged under Section 15(b) of the Act, to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 HC Komal Singh; PW-2 HC Malkiat Singh; PW-2 ASI Dilbag Singh (wrongly numbered); PW-3 ASI Amar Singh, Investigating Officer; PW-4 HC Ashok Kumar and PW-5 SI Nachhattar Singh.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, he examined DW1, Surjit Singh and thereafter, closed evidence his defence evidence.

After hearing the Addl. Public Prosecutor for the State, counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved against the judgment of conviction and the order of sentence passed by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 13.08.2008. The sentence of accused/appellant was suspended on the same day.

The learned counsel for the appellant does not press the appeal on its merit and has submitted that the appellant is the sole bread winner of his family and has suffered a protracted trial as the FIR was registered on 2006; he never misused the concession of bail during the trial as well as during the pendency of the present appeal. He is a first offender. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of appellant/accused and supported the judgment 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 unassailed judgment of conviction. There is no merit in this appeal which is dismissed on merits.

In **Ghasita Sahu Vs. State of Madhya Pradesh, 2008 (1) RCR (Criminal) 901**, that since the quantity recovered was less than the commercial quantity though more than the small quantity, the punishment awarded was reduced to already undergone.

Further in **Ramakant Gopalsaran Shahu Vs. State of Gujarat, 2005(3) RCR (Criminal) 204**, it has been held as under:-

“9. In the case before us, since the contraband article

recovered from the house of the appellant weighing 1 Kg. and 300 gms. is neither a small quantity nor a commercial quantity but less than commercial quantity and more than small quantity, Sec.20(b)(ii)(B) has to be kept in mind. This means that proportion of sentence in relation to quantity has to be maintained by the Court. If the trial court fails to maintain the proportion and award sentence regardless of quantity recovered, there would be disparity in the sentence awarded. Since the quantity recovered from the present appellant is only 300 gms. more than the small quantity and 19 kgs. less than the commercial quantity, the sentence prescribed may extent to 10 years. However, merely because the sentence prescribed by the legislature may extent to 10 years, it should not ordinarily be awarded by the trial court for the aforesaid period but for a period keeping in mind the quantity of contraband substance recovered. In the present case, the trial court has awarded R.I. of 10 years with a fine of Rs.1,00,000/-which appears to be unjust, improper and disproportionate. Besides, the trial court has not exercised its discretionary power while awarding alternative sentence also. In default of payment of fine, it has awarded five years R.I. Hence, we are of the opinion that even for fine also, same proportion is required to be maintained.”

The appellant has suffered agony of criminal trial. It is one of the mitigating circumstance to take a lenient view in the matter. The appellant is stated to be a first time offender. He has already suffered agony of protracted trial as the FIR pertains to the year 2006. In view of the above, the prayer made on behalf of the appellant is accepted. The sentence awarded to the appellant is ordered to be reduced to the period already undergone, subject to

payment of fine of ₹15,000/- to be paid within three months from the date of receipt of certified copy of the order. It is made clear that if the amount of fine is not paid within the stipulated period, the present appeal shall be deemed to be dismissed without any notice. The bail/surety bonds furnished by the appellant stands discharged.

Ordered accordingly.

The appeal is partly allowed in the manner indicated above.

17.02.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No