

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

(Sr. No.308)

CRA-S-993-SB-2001

Date of Decision:-March 8, 2017

MANDER SINGH

.....Petitioner

V/S

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : None for the appellant.

Mr. Daljit Virk, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated 22.5.2001 by which the appellant was convicted for offence under Section 15 of the NDPS Act and was sentenced to undergo RI for 10 years and to pay a fine of Rs.1 lac, the present appeal was filed by the appellant-convict.

This appeal was taken up for final hearing by this Court and was decided by judgment and order dated 21.8.2013. This Court by the said judgment and order had found that the appellant had undergone 2 years, 8 months, 23 days of actual sentence by 9-8-2002 and is not facing any other trial under the NDPS Act and the recovery was only 25 kilograms poppy husk which was below commercial quantity and therefore the sentence was reduced to the one already undergone. The appeal was carried to the Supreme Court by the State and the Supreme Court in Crl. Appeal No. 1684 of 2015, set aside the judgment of the learned Single Judge of this Court and held that the sentence could not be reduced merely because the quantity of 25 kilograms of poppy husk was below commercial quantity prescribed .

However, the Apex Court made the following observations while disposing of the said criminal appeal:-

“xxxxx If for any reason the High Court still wants to consider any lesser punishment such consideration can be only by giving proper reasons befitting the case concerned and cannot be done in a mechanical manner as has been done by the High Court in the impugned order.

We order accordingly and the case is remitted back to the High Court for passing appropriate orders on the question of punishment.”

It is in the light of the above, after remand the appeal is required to be decided again.

None appears for the appellant.

It is not in dispute that the appellant was apprehended on 18.10.1999 along with his scooter which did not belong to him carrying 25 kilograms poppy husk. With the assistance of learned counsel for the State, I have gone through the entire evidence including the chemical examiner's report. The evidence tendered by the prosecution of the official witnesses who were examined clearly proved the case of the prosecution beyond any doubt. The scientific report also shows that 'chura poppy heads' were detected.

Looking to the reasons given by the trial court and the evidence which I have myself seen, documentary as well as oral, I do not think that this Court would be able to interfere with the finding of conviction recorded by the trial court against the appellant.

The next question however is in accordance with the liberty

given by the Supreme Court to reconsider the issue regarding reduction of sentence. I find that the incident is of 18.10.1999 and there is no other case reported against the appellant. On the contrary, learned State Counsel makes a statement in fairness that there was one more case but the appellant was acquitted in that case. Looking to the time lapse, namely from 18.10.1999 till this date, I think imprisonment of 2 years, 8 months, 23 days undergone by the appellant should sub-serve the interest of justice instead of pushing the appellant again jail for serving out the remaining sentence. The period from 18.10.1999 is so long that it would be wholly unjust to push the appellant again in jail. The appellant must be having the family to maintain. Looking to the fact that the appellant has served out actual sentence, I make the following order:-

ORDER

- (i) Crl. Appeal No. 993-SB of 2001 is partly allowed;
- (ii) the judgment and order of eviction of the appellant is confirmed;
- (iii) the judgment and order of sentence ordered by the court below is set aside and is modified and the sentence is reduced to the one which the appellant has already undergone;
- (iv) the appeal is thus disposed of.

March 08, 2017

Rajeev

(A.B. Chaudhari)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No