

CRA-S-2036-SB-2004

[1]

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

(Sr. No.322)

CRA-S-2036-SB-2004

Date of Decision:-14.02.2017

Harminder Singh

.....Appellant

V/S

State of Punjab

.....Respondent

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

Present : Mr. Tribhawan Singla, Advocate,
for the appellant.

Mr. Sidakmeet Sandhu, AAG Punjab.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated October 11, 2004 passed by the Judge Special Court, Barnala, by which the appellant-Harminder Singh was convicted for offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for one and half years and to pay fine of ₹1,000/- and in default of payment of fine to undergo further rigorous imprisonment for one month, the appeal was filed in this Court by the convict.

In support of the appeal the learned counsel for the appellant vehemently argued that there was violation of Section 50 of NDPS Act while making recovery of the alleged contraband. He submits that the prosecution did not lead credible evidence before the trial Court and, therefore, the trial Court made a mistake in convicting the appellant-Harminder Singh. In the alternative, he submitted that the quantity of contraband that was allegedly seized was 15 kg. of poppy husk which is not

a commercial quantity and the incident had taken place according to prosecution on April 04, 2003. There is no offence registered against the appellant-Harinder Singh to his credit other than the one in question. He has already undergone the sentence of two months and twenty five days and, therefore, the sentence deserves to be reduced.

Per contra, the learned State counsel supported the impugned judgment and order of conviction and sentence and submitted that the impugned judgment and order cannot be faltered as there is a proper appreciation of evidence made by the learned trial Judge and has convicted the appellant-Harinder Singh. There is no need to reduce the sentence as urged by learned counsel for the appellant. He, therefore, prayed for dismissal of the appeal.

I have heard learned counsel for the rival parties and have perused the reasons recorded by the learned trial Judge for recording conviction. At the outset, I find that the submissions made by learned counsel for the appellant cannot be accepted. The prosecution examined the witnesses to show that the entire procedure contemplated under Section 50 of NDPS Act was strictly followed. The trial Court had given reasons in paragraph-15 which I quote hereunder:-

“15. I have considered the arguments of the ld.Addl.P.P. for the State the defence Counsel and have gone through the authorities cited by them. On the examination of PW.given up by the prosecution as won over by the accused and examined by the accused in his defence. The learned Addl.P.P. for the State in reply to the authorities cited by the defence Counsel, has relied upon 1995(2) Recent CR-251 (based on the judgment of the Hon’ble Supreme Court reported in 1980(i) Crl. Law Journal-564 Hajari Lal Vs. The State (Delhi Admn) of our Hon’ble High Court, wherein it is held that independent witness won over by the accused and given up by the prosecution and he appeared in

defence, his statement should not be believed. There is no ground at all to disbelieve the official witnesses. Moreover, all the other defence witnesses examined by the accused are interested witnesses. They belong to the village of the accused. None of them dared to complain against the police, due to the alleged false implication of the accused. Even DW.2 Jagjit Singh has not denied the recovery of 15 kg. poppy husk from the accused. As regards the compliance of Sec.50 of the Act is concerned, it is not applicable at all because this Section is only applicable where personal search of the accused is to be conducted. In the present case, the accused was caughtred handed while moving his hand in the plastic bag, containing poppy husk lying on the ground. All other arguments advanced by the counsel for the accused are not tenable.”

I do not find any fault with the reasons recorded by the learned trial Judge and I concur with the findings of fact recorded by the learned trial Judge. I, therefore, confirm the finding of conviction under Section 15 of NDPS Act. The next question is about the award of sentence. The learned trial Judge has awarded the sentence of one and half years and fine of ₹1,000/-. The incident had taken place in the year 2003 and the contraband that was seized was 15 kg of poppy husk which is not a commercial quantity. There is no offence reported against the appellant. Looking to the time gap from 2003 till date and looking to the further fact that the appellant-Harinder Singh has already undergone more than two and half months imprisonment, I think the interest of justice will be met, if the appellant-Harinder Singh is asked to pay fine in the sum of ₹20,000/- instead of ₹1,000/- and to allow him to be set free, insofar as the remaining part of sentence is concerned. In that view of the matter, I make the following order:-

ORDER

1. CRA-S-2036-SB-2004 is partly allowed.

- 2. The judgment and order of conviction under Section 15 of NDPS Act recorded against the appellant is confirmed.
- 3. The judgment and order of sentence of one and half years is set aside and modified to the one already undergone by him.
- 4. The appellant-Harminder Singh shall, however, pay fine in the sum of ₹20,000/-, in addition to ₹1,000/- already paid, within six months from today, in default, he shall undergo further rigorous imprisonment for one month.

February 14, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No