

CRA-S-2060-SB-2004

[1]

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

(Sr. No.323)

CRA-S-2060-SB-2004

Date of Decision:-14.02.2017

Nand Lal

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : Mr. J.B.S. Gill, Advocate,
for the appellant.

Mr. Surender Singh, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated September 03, 2004 passed by the Judge Special Court, Karnal, by which the appellant-Nand Lal was convicted for offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for three years and to pay fine of ₹7,500/- and in default of payment of fine to undergo further rigorous imprisonment for seven months, 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-Nand Lal the alternative, he submitted that the quantity of contraband that was allegedly seized was 35 kg. of poppy husk which is not a commercial quantity and the incident had taken place according to prosecution on

March 03, 2003. There is no offence registered against the appellant-Nand Lal to his credit other than the one in question. He has already undergone the sentence of six months 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-Nand Lal. 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-23 which I quote hereunder:-

“23. The learned defence counsel has pointed out certain discrepancies in the statements of the witnesses. He has pointed out that PW2 has stated that they started from the police station at 12.45 PM whereas PW4 stated that they started from the police station at 12.20 PM. According to PW2 accused was apprehended at distance of 5-10 paces whereas PW4 stated that the accused was apprehended at a distance of 4-5 paces. PW2 stated that the DSP came at the spot at 5:30 PM whereas PW7 Kiratpal Singh said that he reached at the spot at 3.30 PM. PW2 has stated that it took 5-1/2 hours at the spot whereas PW4 stated that they took total 3-1/2 hours at the spot. According to PW2 DSP came at the spot at 3 PM and left the spot at 5.30 PM. It means he remained at the spot for 2-1/2

hours whereas PW7 said that he remained at the spot for 1-1/2 hours. All these discrepancies discussed above are minor in nature and do not go to the root of the case. The learned defence counsel has further pointed out that PW2 has stated that the constable who had carried ruqqa returned at the spot at 6 PM. PW4 stated that he came back at the spot at 6.10 PM but PW7 said that the constable who was sent with the ruqqa had not come back at the spot but he came in his office at 6 PM. The learned defence counsel also pointed out that PW2 and PW4 stated that one or two person were coming and going whereas PW7 said that during that period no one came there. According to PW2 weighing material was brought after the arrival of DSP Kiratpal Singh whereas PW7 Kiratpal Singh stated that the IO had already arranged for the weighing material. These discrepancies are also not material in nature and are even bound to occur in the testimonies of the truthful witnesses with the lapse of time as human memories fade with the passage of time. As per version of PW2, DSP has already left the spot at 5.30 PM. The constable who had carried ruqqa had returned at the spot at 6/6.10 PM, so the version of PW7 that the constable who had carried ruqqa did not return in his presence at the spot, stands corroborated. The discrepancies as to whether the weighing material was arranged before or after the arrival of the DSP is of no consequence and does not hit the bottom of the case. Similarly the discrepancy as to how much time was spent at the spot is also not material in nature. Thus, the discrepancies pointed out by the learned defence counsel do not create any dent in the otherwise consistent, cogent and reliable testimonies of PW2 Braham Sarup a witness of recovery and PW4 ASI Janak Singh, the IO of the case which is fully corroborated from the testimony of PW7 Kiratpal Singh, DSP a gazetted police officer.”

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 three years and to pay fine of ₹7,500/-. The incident had taken place in the year 2003 and the contraband that was seized was 35 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-Nand Lal has already undergone six months rigorous imprisonment, I think the interest of justice will be met, if the appellant-Nand Lal is asked to pay fine in the sum of ₹20,000/- instead of ₹7,500/- 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-2060-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 three years is set aside and modified to the one already undergone by him.
4. The appellant-Nand Lal shall, however, pay fine in the sum of ₹20,000/- 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