

386

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

CRA-S-433-SB of 2008

Date of decision: May 15, 2017

Puran Singh

.....Appellant

Versus

State of Punjab

....Respondent

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

Present: Mr. Karanjit Singh Brar, Advocate for
Mr. S.P.S. Sidhu, Advocate the appellant.

Mr. D.S. Virk, DAG Punjab.

A.B. CHAUDHARI, J (Oral)

Custody certificate filed by the learned State counsel, today in Court, is taken on record.

Being aggrieved by the judgment and order dated 06.12.2007/07.12.2007 passed by the learned Special Judge, Ferozepur by which the appellant was convicted for offence punishable under Section 15(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and was sentenced to undergo Rigorous Imprisonment for ten year and fine of ₹1,00,000/-; in default of payment of fine, further undergo Rigorous Imprisonment for one year, the present appeal was filed by the appellant.

In support of the appeal, learned counsel for the appellant contended that the trial Court committed an error in recording the conviction of the appellant by recording finding which are perverse.

According to him, there are serious discrepancies in the matter of sending of the samples and therefore, the trial Court ought to have rejected the prosecution case rather than holding that it was the clerical mistake. He further contended that it was a chance recovery on the *Naka* and therefore, the prosecution was obliged equally to produce independent witnesses but that was not done. He then contended that the provision of Section 50 of the NDPS Act was not complied with. In the alternative, he contended that the appellant-accused has already undergone sentence of 9 years, 2 months and 4 days as on 10.05.2017 and there is no similar case against the appellant. He also submitted that the appellant cannot pay fine of ₹1,00,000/- and therefore, the sentence of fine should be set aside.

Per contra, learned State counsel supported the impugned judgment and order and relied on the reasons recorded by the learned trial Judge contended that the trial Court has considered the entire sentence on record and has thereafter, came to the conclusion that all the procedures were followed by the police officer concerned and as such, there was no violation of any of the provision of the NDPS Act. He, then contended that the judgment and order of the trial Court is well reasoned and therefore, the appeal is required to be dismissed.

Upon hearing the learned counsel for the rival parties, I find that the trial Court has recorded the finding that the prosecution had duly proved that it had followed the provision of the NDPS Act including the provision of Section 50 of the NDPS Act in Para 13 reproduced below:-

“13. The next contention of the learned defence counsel is

that DSP Gurmit Singh did not give any offer to the accused for his search in the presence of other Gazetted Officer or Magistrate. Hence he has not complied with the provisions of Section 50 of the Act. I have considered this contention of the learned defence counsel and further do not find any force in the same. In the present case the recovery of poppy husk was effected from the truck. So the provisions of Section 50 of the Act do not attract to the facts of the present case. Reliance in this regard may be placed upon State of Punjab Vs. Makhan Singh 2004 (3) Recent Criminal Reports, 1 in which the Division Bench of Hon'ble Supreme Court of India has held that where the recovery of the contraband was effected from a tin box which the accused carried in his hands, it was not a search of the person of the accused and therefore, Section 50 of the Act would not apply to a situation where the search undertaken is not of the person of the accused but of something carried in his hands. Moreover there is already sufficient compliance of the provisions of Section 50 of the Act by the Investigating Officer who has already given offer to the accused whether he wanted to opt the search of the truck in the presence of some Magistrate or Gazetted Officer or from him. So this contention of the learned defence counsel is also rejected.”

The trial Court has dealt with the aspect of the matter with which I agree. In so far as the dates on which the samples taken are concerned, it is true that there was clerical mistake on the paper for sending the samples, but that will not make any difference as rightly found by the trial Court. The net result of the above discussion is that the conviction of the appellant recorded by the trial Court cannot be faltered.

The next question is about the sentence awarded to the

appellant. It is not in dispute that out of the total sentence of 10 years and fine of ₹1,00,000/- and in default of fine, further Rigorous Imprisonment of one year, the appellant has undergone 9 years, 2 months and 4 days of actual sentence. Learned State counsel also fairly submitted that there is no similar offence against the appellant. In my opinion, the appellant has almost completed the sentence and if he has not completed the sentence in lieu of fine, in my opinion, the period of 9 years, 2 months and 4 days actually undergone by him is good enough sentence, which he has undergone and there is no need to push him again in the jail for remaining sentence. It is not necessary, in that view, to maintain the sentence regarding fine of ₹1,00,000/- as well, as the appellant has undergone almost the entire sentence. In that view of the matter, I make the following order:-

ORDER

- (i) CRA-S-433-SB of 2008 is partly allowed;
- (ii) The impugned judgment and order of conviction of the appellant for offence punishable under Section 15(c) of the NDPS Act, is confirmed;
- (iii) The impugned judgment and order of sentence is set aside and modified to one which the appellant has already undergone, including that of payment of fine and leave sentence thereof.

(A.B. CHAUDHARI)
JUDGE

May 15, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No