

CRA-S-2323-SB-2004

[1]

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

(Sr. No.327)

CRA-S-2323-SB-2004

Date of Decision:-14.02.2017

Harjinder Singh

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : Mr. Rakesh Nagpal, Advocate,
for the appellant.

Mr. Surender Singh, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated November 08, 2004 passed by the Judge Special Court, Kaithal, by which the appellant-Harjinder Singh was convicted for offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to undergo further rigorous imprisonment for four 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-Harjinder Singh. In the alternative, he submitted that the quantity of contraband that was allegedly seized was 180 grams of opium which is not a commercial quantity and the incident had taken place according to

prosecution on June 23, 2002. There is no offence registered against the appellant-Harjinder Singh to his credit other than the one in question. He has already undergone the sentence of more than one month 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-Harjinder 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 paragraphs 24 and 25 which I quote hereunder:-

“24. This argument of learned defence counsel is not sustainable as PW1 Sawaran Lal SI categorically stated that though there is over writing in letter 'J' yet it could be read as 'SJ' and 'ST'. The addition of word 'PC' in the statement of Jai Lal HC Ex.DA and Ex.DB was made at that very time when their statements were recorded and not at any subsequent time. Under these circumstances, the addition of word 'PC' cannot be said to be detrimental to the rights of the accused.

25. It was further argued by learned defence counsel that accused was apprehended at bus-stand Kaithal. The time was of evening. ASI Surinder Pal admitted that public witnesses were available at bus stand Kaithal. Even otherwise, it can be taken into

consideration that at bus-stand public witnesses are always available. None of them has been joined in the investigation. The house of DSP was situated at Karnal road. It is again a place where public witnesses are generally available. It is no denying a fact that public witnesses were very much available at that time. Surinder Pal ASI has stated that on the way to DSP office many persons were passing through the road and none was asked to join investigation. In the light of this evidence available on the file, the learned defence counsel cited Ramphal alias Makkar Vs. The State of Haryana, 2003 (2) RCR 437 (P&H) and Dharminder Kumar Jain Vs. State of Pun.2001(4) RCR 9 (P&H). ”

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 18 of NDPS Act. The next question is about the award of sentence. The learned trial Judge has awarded the sentence of one year and to pay fine of ₹5,000/-. The incident had taken place in the year 2002 and the contraband that was seized was 180 grams of opium which is not a commercial quantity. There is no offence reported against the appellant. Looking to the time gap from 2002 till date and looking to the further fact that the appellant-Harjinder Singh has already undergone more than one month imprisonment, I think the interest of justice will be met, if the appellant-Harjinder Singh is asked to pay fine in the sum of ₹20,000/- in addition to ₹5,000/- already paid 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-2323-SB-2004 is partly allowed.
2. The judgment and order of conviction under Section 18 of NDPS Act recorded against the appellant is confirmed.
3. The judgment and order of sentence of one year is set aside and

modified to the one already undergone by him.

4. The appellant-Harjinder Singh shall, however, pay fine in the sum of ₹20,000/- in addition to ₹5,000/- 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