

CRA-S-1246-SB-2005

[1]

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

(Sr. No.340)

CRA-S-1246-SB-2005

Date of Decision:-March 29, 2017

Suba Singh

.....Appellant

V/S

State of Punjab

.....Respondent

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

Present : Ms. G.K. Mann, Advocate,
for the appellant.

Mr. D.S. Virk, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Heard learned counsel for the rival parties.

In the present appeal there is challenge to the judgment and order dated 19.07.2005 passed by the Judge, Special Court, Amritsar, by which the appellant-Suba Singh was convicted for offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act and was sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of ₹500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months.

In support of the appeal, Ms. G.K. Mann, learned counsel for the appellant has vehemently contended that there is a violation on the part of the investigating machinery in relation to the Section 50 of the NDPS Act, namely that no specific information was given to the accused by the Deputy Superintendent of Police or by the Police Officer that the appellant was entitled to have the services of Magistrate for carrying out the search as

contemplated under Section 50 of the NDPS Act. In the absence of such an offer the trial was clearly vitiated. She then contended that there was delay in sending the sample and, therefore, the prosecution had failed to prove its case. She then argued that the secret information that was received was admittedly not reduced to writing, which shows the doubtful nature of the prosecution case. She then argued that there is a doubt whether the DSP who had taken the personal search was present on the spot or whether all the papers were prepared in the police station and, therefore, the trial Court ought to have extended the benefit of doubt to the appellant. In the alternative, she submitted that the appellant-Suba Singh was sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of ₹500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months and he has already undergone sentence of one month and twelve days. The date of incident was August 06, 2002.

Per contra, the learned State counsel opposed the appeal and argued that in the judgment and order reasons recorded by the learned trial Judge are legal, correct and proper and based on evidence. He further argued that looking to the nature of the quantity of the contraband that was seized from the appellant, the sentence of the appellant is not required to be reduced and thus prayed for dismissal of the appeal.

I have heard learned counsel for the rival parties and have also perused the evidence on record with the assistance of the learned counsel for the appellant. Admittedly, DSP who had taken the search was examined before the trial Court. A perusal of the testimony does not reveal any such inconsistencies or impossibilities as contended by learned counsel for the

appellant to disregard his evidence. On the contrary evidence is trustworthy and there is no reason for the DSP to depose against the appellant-Suba Singh. At any rate, he has proved the prosecution case to the hilt. In that view of the matter, I am not impressed with the submission that Section 50 of the NDPS Act was violated. Insofar as the delay in sending the sample is concerned, there is no mandatory provision to that effect and the said submission is also reflected.

The next submission is that the appellant has already undergone sentence of one month and twelve days and, therefore, it should be reduced looking to the period that has passed. Having regard to the fact that the incident relates to the year 2002 and that the appellant is a farmer and the quantity of the contraband that was seized, I think there no point in pushing the appellant-Suba Singh again in jail after so many years, particularly because the appellant has undergone sentence of one month and twelve days and at any rate he was awarded the sentence of only 1½ years. The order awarding sentence of 1½ years has been accepted by the State and has not been challenged. That is one more reason why, I think, it would not be appropriate to push the appellant in jail after so many years to serve out the remaining sentence out of 1½ years. In my opinion, since the sentence of the appellant is being reduced, the amount of fine must be increased. In the result, I make the following order:-

ORDER

1. CRA-S-1246-SB-2005 is partly allowed.
2. The judgment and order of conviction dated 19.07.2005 passed by the Judge, Special Court, Amritsar, is confirmed.
3. The judgment and order regarding sentence awarded to the

appellant-Suba Singh is set aside and modified to the sentence which the appellant has already undergone, but the appellant would pay fine in the sum of ₹10,000/- within six months by depositing the same in the trial Court which shall be forfeited to the State government.

March 29, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No