

CRA-S-1838-SB-2005

[1]

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

(Sr. No.345)

CRA-S-1838-SB-2005

Date of Decision:-May 10, 2017

Suba Singh

.....Appellant

V/S

State of Punjab

.....Respondent

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

Present : None for the appellant.

Mr. D.S. Virk, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the impugned judgment and order dated 09.09.2005 passed by the Judge Special Court, Bathinda by which the learned trial Judge has convicted the appellant-Suba Singh for offence under Section 18-C of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') and sentenced him to undergo rigorous imprisonment for 01 year and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for 03 months, the present appeal was filed by the appellant-Suba Singh in this Court.

It is the case of the prosecution that on 18.04.2002 police party headed by ASI Mohinder Singh was on patrolling and checking of suspected persons and then the appellant-Suba Singh was found driving a motorcycle and the police party had suspicion about him and, therefore, the police officer gave option about search by Magistrate or Gazetted Officer. On his consent, the police officer conducted search and the appellant-Suba Singh was found in possession of 250 grams of opium. The investigating

officer had followed the procedure under Section 50 of the Act in the presence of DSP Ashu Tosh and accordingly sample etc. were prepared. Admittedly, the challan was filed. The trial Court held the trial and convicted the appellant-Suba Singh as aforesaid.

I have seen the entire record including the reasons given by the learned trial Judge for recording the judgment and order of conviction and sentence of the appellant-Suba Singh.

The learned trial Court has found on evidence that there was compliance of Section 50 of the Act duly made by the investigating officer. For that purpose, the learned trial Court has discussed the testimonies of PW1-DSP Ashu Tosh and PW-2 ASI Mohinder Singh. The relevant paragraph of the impugned judgment about discussion on Section 50 of the Act is para-6, which I quote hereunder:-

“6. Testimony of PW-1, the IO of the case fully supports case of prosecution regarding nabbing of accused in presence of independent witness Prem Singh and then apprising him of his right of being searched as per requirement of Section 50 of ND & PS Act, on which accused opted through dissent statement Ex.PB to get the search conducted in presence of Gazetted Officer and then PW1 DSP Ashu Tosh Kaushal from Talwandi Sabo called by flashing wireless message. Further testimonies of PW1 and PW2 establishes that PW1 after arrival on the spot disclosed his identity as DSP Talwandi Sabo and a Gazetted Officer and apprised accused of his right of being searched in presence of gazetted Officer or Magistrate, on which accused opted through consent statement Ex.PA, the search be conducted in presence of PW1. It was thereafter that on direction of PW1 Search of accused conducted and opium wrapped in envelope recovered from side pocket of long shirt of accused, out of which after drawing 10 gms as sample remaining on weighment found as 240 Gms. Further testimonies of PW1 and PW-2 establishes that after sealing sample seal and bulk parcel with seal MS and preparation of sample seal chit Ex.P1 those alongwith motor cycle No.PB-45-2365 recovered from accused taken in possession through memo Ex.PB. Currency notes of rs.45/- recovered from personal search were taken in possession through memo Ex.PC is also a fact born from

statements of PW-1 and PW-2. Necessary corroborative evidence namely bulk parcel Ex.P2 and motor cycle Ex.P3 were produced in court in course of statements of PW1 and PW2 and as such it is contended that direct and corroborative evidence enough to establish guilty of the accused. Besides personal search contended to be conducted after due compliance of provisions of Section 50 of NDPS Act.

Having gone through the said reasons recorded by the learned trial judge for recording the above finding of fact, I am inclined to concur with the same in relation to the compliance of Section 50 of the NDPS Act by the concerned police officer.

Having thus disposed of the question regarding compliance of Section 50 of the Act, as a sequel I hold that the finding of conviction will have to be held to be legal, correct and proper.

The next question is about the award of sentence. As stated earlier, the occurrence had taken place on April 18, 2002. The quantity of contraband that was found with the appellant-Suba Singh was namely 250 grams of opium as against the commercial quantity prescribed as 2.5 Kgs. In my opinion, looking to the quantity of the opium that was seized to be quite low and in the absence of any other case against the appellant and looking to the fact that the appellant has already undergone the sentence of 05 months and 20 days out of his total awarded sentence of 01 year and also paid the fine these are the mitigating circumstances for reduction of the sentence to the one the appellant-Suba Singh has already undergone. At any rate, the incident as stated earlier was of 18.04.2002 and it would be harsh at such a late stage to push the appellant again in jail after so many years for serving out the remaining sentence, particularly because the appellant-Suba Singh has already undergone the sentence of more than 05 months out of his

total awarded sentence of 01 year. In that view of the matter, I make the following order:-

ORDER

1. CRA-S-1838-SB-2005 is partly allowed.
2. The impugned judgment and order of conviction dated 09.09.2005 passed by the Judge Special Court, Bathinda by which the learned trial Court convicted the appellant-Suba Singh for offence under Section 18-C of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') is confirmed.
3. The impugned order dated 09.09.2005 passed by the Judge Special Court, Bathinda awarding sentence of 01 year to the appellant is set aside and modified to the one the appellant has already undergone.
4. Fine has already been paid.
5. Disposed of.

May 10, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No