

CRA-S-1868-SB-2005

[1]

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

(Sr. No.348)

CRA-S-1868-SB-2005

Date of Decision:-April 27, 2017

Mohinder Singh

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : Mr. Sanjiv Sheoran, Advocate,
for the appellant.

Mr. Arjun Singh Yadav, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Heard learned counsel for the rival parties.

Being aggrieved by the judgment dated 07.10.2005 and order of conviction dated 08.10.2005 passed by the Sessions Judge, Fatehabad, by which the appellant-Mohinder Singh was convicted for offence under Section 15 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 simple imprisonment for 15 days, the present appeal was filed in this Court by the convict. According to the learned counsel for the appellant, fine has already been paid by the appellant.

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-Mohinder Singh. In the

alternative, he submitted that the quantity of contraband that was allegedly seized was 10 Kgs. of poppy husk which is not a commercial quantity and the incident had taken place according to prosecution on December 29, 2001. There is no other offence registered against the appellant-Mohinder Singh other than the one in question. He has already undergone the sentence of 04 months and 29 days and, therefore, the sentence deserves to be reduced to the one already undergone.

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 which has rightly convicted the appellant-Mohinder Singh. There is no reason 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. Perused the reasons recorded by the learned trial Judge for recording conviction.

At the outset, I find that the appellant was caught with the contraband i.e. poppy husk weighing 10 Kgs. Looking to the fact that 50 Kgs. falls in the commercial quantity, the contraband that was seized was quite less in weight. The submissions as to challenge to conviction 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.

I do not find any fault with the reasons recorded by the learned trial Judge and I concur with the findings of conviction 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 one year and to pay a fine of ₹5,000/- and in default of payment of fine to undergo further simple imprisonment for 15 days. The fine of ₹5,000/- awarded by the trial Court has already been paid. The incident had taken place in the year 2005 and the contraband that was seized was 10 Kgs. of poppy husk which is not a commercial quantity. There is no other offence registered against the appellant. Looking to the time gap from 2005 till date and looking to the further fact that the appellant-Mohinder Singh has already undergone 04 months and 29 days imprisonment out of his total awarded sentence, I think the interest of justice will be met, if the appellant-Mohinder Singh is asked to pay fine in the sum of ₹10,000/- in addition to ₹5,000/- awarded by the trial Court and to allow him to be at large, insofar as the remaining part of sentence is concerned. In that view of the matter, I make the following order:-

ORDER

1. CRA-1868-SB-2005 is partly allowed.
2. The impugned judgment of conviction dated 07.10.2005 passed by the Sessions Judge, Fatehabad, by which the appellant-Mohinder Singh was convicted under Section 15 of NDPS Act is confirmed.
3. The impugned order of sentence dated 07/08.10.2005 passed by the Sessions Judge, Fatehabad by which the appellant was sentenced to undergo rigorous imprisonment for one year is set aside and modified to the one already undergone by the appellant i.e. 04 months and 29 days.

4. The appellant-Mohinder Singh shall, however, pay fine in the sum of ₹10,000/- in addition to ₹5,000/- awarded by the trial Court i.e. total ₹15,000/- within a period of one year from today with the trial Court which shall be forfeited to the State of Haryana, and default to undergo simple imprisonment for 15 days.

April 27, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No