

CRA-S-272-SB-2005

[1]

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

(Sr. No.331)

CRA-S-272-SB-2005

Date of Decision:-17.02.2017

Joginder Singh

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : Mr. J.S. Virk, Advocate,
for the appellant.

Mr. Arjun Singh Yadav, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated January 17, 2005 passed by the Presiding Officer, Special Court, Kurukshetra, by which the appellant-Joginder Singh was convicted for offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹35,000/- and in default of payment of fine to undergo further rigorous imprisonment for nine 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-Joginder Singh . In the alternative, he submitted that the quantity of contraband that was allegedly seized was 35 kilograms of poppy husk which is not a

commercial quantity and the incident had taken place according to prosecution on December 03, 2001. There is no offence registered against the appellant-Joginder Singh to his credit other than the one in question. He has already undergone the sentence of 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 rightly convicted the appellant-Joginder 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 18 and 19 which I quote hereunder:-

“18. As far as the question of joining of independent witnesses is concerned, I would like to mention here that requirement of associating one or more witnesses from the general public during investigation is not based upon any rule of law and is rather based upon rule of prudence. Applying the rule of caution/prudence I am of the view that there are no reasons to paint the statements of the above witnesses of prosecution with black colour simply because they happen to be official witnesses. It cannot be said that they have deposed falsely. No circumstance has been brought on record showing that they had any axe to grind against the accused. Perusal of the ruqa Ex.PC

and formal FIR Ex.PA/1 shows that investigating officer has specifically mentioned that on receipt of secret information, he formed a raiding party and reached at the disclosed place, where he laid a picket. It has come in evidence of the material prosecution witnesses that picket had been laid at about 2.00/2.15 a.m. and accused was apprehended at about 3.00/3.15 a.m. So, in such peak hours of night, it is always difficult for the police to join some independent witnesses in the investigation. It is a fact which cannot be lost sight of. Similarly, non-joining of servant at petrol pump, owner of the Farsi Kanda or owner of the house wherein Ram Dhan Tehsildar was residing, is also of no consequence, because the proceedings were witnessed by Ram Dhan, Executive Magistrate, Ismailabad, PW 3, who cannot be said to be under the thumb of police and was an independent witness. He has categorically stated about the manner in which contraband was recovered from the accused and there is no reason to disbelieve his statement. Even otherwise, it is now well settled law that statements of official witnesses are at par with the testimony of independent witnesses and the same can be made basis for conviction, if they are otherwise trustworthy and inspire confidence. Accused has failed to point out any material inconsistency in the statements of official witnesses which could render the same doubtful. The facts and circumstances of the authorities relied upon by the learned defence counsel are not identical to the facts of the present case and, therefore, no benefit whatsoever of the same can be given to him, because in 2003(3) R.C.R. (Criminal) 762(Supra) independent witness who had been joined was not examined and was given up and seal after use was not given to independent witness, whereas it was held in 2003(1) R.C.R.(Criminal) 333 (supra) that accused will be entitled to acquittal if empowered officer deliberately failed to join independent witnesses and if the failure is due to lack of time and opportunity, then trial is not affected, whereas there are no such circumstances in the instant case.

19. Learned counsel had drawn my attention towards statement of HC Sartaj Singh PW 1 and urged that he has admitted that there was over-writing on digit 34 Kgs. He contended that the record was interpolated by the police and, therefore, a serious doubt is created in prosecution version. I do not find any force in the arguments so raised by the learned defence counsel, because clerical mistakes are bound to occur in the discharge of official duties by any person. If there

appears some correction by over-writing in register no.19 of the police station regarding deposit of case property with the Moharrir Head Constable, it would not vitiate the entire trial and no benefit of the said over-writing can be given to the accused, when it is otherwise proved on record by sufficient oral and documentary evidence that 35 kilograms of poppy husk was recovered from the possession of accused.”

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 15 of NDPS Act. The next question is about the award of sentence. The learned trial Judge has awarded the sentence of three years and to pay fine of ₹35,000/-. The incident had taken place in the year 2001 and the contraband that was seized was 35 kilograms of poppy husk which is not a commercial quantity. There is no offence reported against the appellant. Looking to the time gap from 2001 till date and looking to the further fact that the appellant-Joginder Singh has already undergone one month imprisonment, I think the interest of justice will be met, if the appellant-Joginder Singh is asked to pay fine in the sum of ₹10,000/- in addition to ₹35,000/- 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-272-SB-2004 is partly allowed.
2. The judgment and order of conviction under Section 15 of NDPS Act recorded against the appellant is confirmed.
3. The judgment and order of sentence of three years is set aside and modified to the one already undergone by him.

4. The appellant-Joginder Singh shall, however, pay fine in the sum of ₹10,000/- in addition to ₹35,000/- already paid within six months from today, in default, he shall undergo further rigorous imprisonment for one month.

February 17, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No