

CRA-S-36-SB-2005

[1]

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

(Sr. No.328)

CRA-S-36-SB-2005

Date of Decision:-15.02.2017

Ram Phal

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : Mr. Virender Singh Punia, Advocate,
for the appellant.

Mr. Surender Singh, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the judgment and order dated December 02, 2004 passed by the Judge Special Court, Kaithal, by which the appellant-Ram Phal was convicted for offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for eight months and to pay fine of ₹1,000/- and in default of payment of fine to undergo further rigorous imprisonment for one month, 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-Ram Phal. In the alternative, he submitted that the quantity of contraband that was allegedly seized was 12 kg. of poppy husk which is not a commercial quantity and the incident had taken place according to prosecution on

March 28, 2002. There is no offence registered against the appellant-Ram Phal 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 convicted the appellant-Ram Phal. 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 29 and 30 which I quote hereunder:-

“29. No doubt, there is no mandate of law that in each and every case, independent witnesses must be associated but to lend the credence to the prosecution, it was incumbent upon the Investigating Officer to associate independent witnesses atleast at the time of search and seizure. The conduct of the Investigating Officer in not associating the independent witnesses inspite of ample opportunity renders the prosecution case highly doubtful. However, it is well settled law that conviction can be based on the statements of official witnesses alone, if their statements inspire confidence. Reliance can be placed on judgment Jai Singh Vs. State of Haryana 2000 Supreme Court Cases (Criminal) 337, wherein Hon'ble Supreme Court held that evidence of the Investigating Officer and other

witnesses which remained unshaken despite of cross examination, to be admissible in absence of independent corroboration. The reliance can also be placed on Judgment State of Punjab Vs. Balbir Singh 1994(1) RCR 736 wherein, it was held that testimony of official witness is not to be doubted or discarded merely on the ground that he happened to be an official. As a rule of caution, courts are to look for independent corroboration. The reliance can also be placed on Judgment of our own Hon'ble High Court cited as Darshan Khan Vs. State of Punjab, 1999(1) RCR 269, wherein it was observed that conviction can be based on the testimony of the official witnesses, whose statements should be considered at par with that of non-official witnesses. If the courts takes the view that non-examination of the independent witness is fatal, then the reliability of a Magistrate or Gazetted Officer would always be affected and they will be considered as second rate witnesses. The reliance can also be placed on Bhola Singh Vs. State of Haryana 1999(3) Recent Criminal Reports 258.

30. The learned defence counsel further cited Pawan Kumar Vs. State of Haryana 1998(2) Criminal Court Judgments 7, (P&H) but this judgment is on the point where constable who took sample to FSL was not examined. So is not the present case in the case in hand. Constable Daya Nand No.978 took sample to FSL and deposited the same. Even report FSL Ex.PL also corroborates this fact. As such, the aforesaid Judgment cannot be said to be applicable to the facts of the present case.”

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 eight months and to pay a fine of ₹1,000/-. The incident had taken place in the year 2002 and the contraband that was seized was 12 kg of poppy straw 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-Ram Phal has already undergone one month imprisonment, I think the interest of justice will be met, if the appellant-Ram Phal is asked to pay fine in the sum of ₹20,000/- instead of ₹1,000/- 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-36-SB-2005 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 eight months is set aside and modified to the one already undergone by him.
4. The appellant-Ram Phal shall, however, pay fine in the sum of ₹20,000/- within six months from today, in default, he shall undergo further rigorous imprisonment for one month.

February 15, 2017

Pankaj

**(A.B. Chaudhari)
Judge**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No