

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

Crl. Appeal No.S-1170-SB of 2016 (O&M)

Date of Decision: March 03, 2017

Jagdish Singh @ Bittu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Riffi Birla, Advocate
for the appellant.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction dated 26.02.2016 and order of sentence dated 29.02.2016 passed by learned Judge, Special Court, Fazilka, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of four months under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Fazilka, are as under:-

“2. The brief facts of the case of the prosecution are that on 27.05.2014 ASI Balkar Singh along with HC Gurdeep Singh, No.400, HC Gurbaksh Singh, No. 237, HC Harmit Chand, No.1006, PHG Harjinder Singh, No.5195 was on patrolling duty and checking of suspected persons on Govt. vehicle Tata 207 bearing registration No. PB-12G-9048, which was being

driven by HC Harmit Chand, No.1006 and the police party was going towards village Kalu Wala, Baghe Ke Morh, Dharmu Wala, Ladhu Wala Hithar and Sukhera Bodla. When the police party reached village Sukhera Bodla, 10 Karams behind the eastern side of bridge Seepage drain, then one hindu gentleman was seen coming carrying something heavy in a Gatta plastic on his head, who on seeing the police party got nervous and turned towards his left side pavement of Seepage drain. On suspicion, I.O., ASI Balkar Singh apprehended the accused with the help of other police officials. On inquiry, he disclosed his name as Jagdish Singh @ Bittu son of Karnail Singh, Caste Rai Sikh, resident of village Sukhera Bodla. ASI Balkar Singh informed the said person that he is having suspicion that he was carrying some intoxicant substance in his Gatta plastic. ASI Balkar Singh made the said person aware of his right to get his Gatta Plastic searched in the presence of some Gazetted Officer or a Magistrate but accused Jagdish Singh reposed confidence in the I.O. The I.O. prepared Consent memo, which was signed by the accused. Before conducting search of Gatta plastic, I.O. tried to join a public witness in the police party but none was available. Thereafter, on search of the Gata plastic, Poppy husk was recovered. Out of recovered bulk, one sample of 250 Grams was separated and one additional sample of 250 Grams of Poppy husk was also taken out by the I.O. and converted them into separate parcels and the remaining bulk on measurement came out to be 09 Kgs 500 Grams of Poppy husk. The bulk parcel and sample parcels were sealed by the I.O. with his seal bearing impressions "BS". Form No.M-29 was prepared at the spot. Seal after use was handed over to HC Gurdeep Singh. Both the sample parcels and bulk parcel along with Form No.M-29 was taken into police possession. Ruqa was sent to the police station through PHG Harjinder Singh for registration of case as against the accused. Statements of the witnesses were recorded. Site plan of the place of recovery was prepared. After completion of investigation, report under section 173 Cr.P.C. was presented in the court."

On presentation of challan against accused-appellant , copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Constable

Constable Gurdeep Singh and PW-4 ASI Balkar Singh, Investigating Officer.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication in the present case. In defence, accused-appellant examined DW-1 Baldev Singh alias Debu and DW-2 Manjit Kaur.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 10 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. She also contended that the appellant is suffering from criminal proceedings since 2014. She further contended that the appellant is poor person, first offender and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 4 months of actual sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 26.02.2016 passed by learned Judge, Special Court, Fazilka, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is poor person, first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of 4 months and that the recovery from the accused-appellant falls under non-commercial quantity i.e. 10 kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Jagdish Singh @ Bittu is on bail, his bail/surety bonds stand discharged.

March 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No