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

CRA-S-502-SB of 2005

Date of decision: February 16, 2017

Balraj

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. R.S. Mamli, Advocate for the appellant.

Mr. Surender Singh, AAG Haryana.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 22.02.2005 passed by the Additional Sessions Judge (Special Court), Kurukshetra, in Sessions case (NDPS) No.3 of 2005 by which the appellant was convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and was sentenced to undergo Rigorous Imprisonment for two months and to pay fine of ₹5,000/-, the present appeal was filed by the appellant.

In support of the case, learned counsel for the appellant vehemently contended that there was no evidence whatsoever available on record for recording the conviction of the appellant nor there was any required procedure followed by the police under Section 15 of the NDPS Act. He, therefore, submitted that the appellant deserves to be acquitted. In the alternative, he contended that the quantity of poppy-husk was only 2 kg and incident said to have taken place on 25.02.2002, 15 years have already passed. The appellant is poor person and pushing him in Jail at such a late

stage would obviously, effect his family. He, therefore, prayed for leniency.

Per contra, learned State counsel opposed the appeal and support the impugned order of conviction.

I have heard learned counsel for the rival parties and perused the reasons recorded by the learned trial Judge. It is not in dispute that FIR No.82 dated 25.02.2002, under Section 15 of the NDPS Act, was registered at Police Station Sadar Thanesar in respect of the incident on 25.02.2002. As per prosecution case, petitioner was found in possession of 2 kg of poppy-husk. The prosecution tendered the evidence since the procedure required to be followed, was duly followed. Instead of repeating the reasons recorded by the trial Court, I quote the following paragraphs from the judgement dated 22.02.2005:-

“5. SI Rajinder Singh (I.O.) has appeared as PW8. He is the Investigating Officer of this case. His detailed version has already appeared in the earlier part of the judgment while describing the facts of the case. Discussion of his testimony is not being made here again as it would only be repetition of the same.

6. SI Mohan Lal (PW7) on 25.02.2002 was posted as ASI in CIA Staff, Kurukshetra. He along with SI Rajinder Singh (I.O.) and other police officials was present at the time of apprehension and consequent recovery of contraband from the accused. His deposition is vivid right from the time, the accused was intercepted by the police on suspicion till he was lodged in the lock-up. He is specific with regard to recovery, drawing of sample, production of the accused with the case property and witnesses etc. before SI/SHO of the Police Station and then of deposits of the case property with the Moharrir Head Constable.

7. SI/SHO Paras Kumar (PW1) on 25.02.2002 was posted in Police Station Sadar Thanesar. Samples, case property,

specimen seal impressions and the witnesses were produced before him on 25.02.2002 by SI Rajinder Singh (I.O.). After verifying the facts, he had affixed his own seal 'PK' on both the sealed parcels i.e. Case property and sample parcel as well as on specimen seal impressions and then directed SI Rajinder Singh (I.O.) to deposit the case property with the MHC. He has proved residue of the contraband as Ex.P1.

8. HC Mange Ram (PW3) was then posted as Reader to DSP, Headquarter, Kurukshetra. On 26.02.2002, on receipt of the report (Ex.PA) under Section 57 of the Act, he had produced the same before Sh. Anil Kumar Dhawan, the then DSP, Headquarters, Kurukshetra who after perusing the same had made his endorsement (Ex.PA/1) thereon. This witness had identified the signatures of the then DSP, Headquarter, Kurukshetra and has proved endorsement (Ex.PA/1) made by the DSP.

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13. Report of the Forensic Science Laboratory, Madhuban (Karnal), Haryana is Ex. PD. One sealed cloth parcel sealed with 2 seals of 'RS' and 2 seals of 'PK' was sent to the FSL, Madhuban, for analysis and on examination vide report (Ex.PL), the sample was identified to be of poppy-straw (Choorapost) of *Papaver somiferum* L. After examination, the remnants of the exhibits were sealed with the seal of SSO/General/FSL (H)."

In view above the above discussion and evidence discussed by the trial Court, I am inclined to agree with the conviction recorded by the trial Court.

Having disposing of first contention, the question about the award of sentence need to be seen carefully. It is the case of the prosecution itself that only 2 kg poppy-husk was found in the possession of the appellant on 25.02.2002. The period of 15 years has already passed and the

appellant is on bail during the pendency of the appeal. In this area the use of poppy-husk by the people has been common. At any rate, holding of quantity of 2 kg of poppy-husk, though, would be an offence, but the fact that the appellant has been facing the sword of prosecution for the last 15 years, would be a mitigating circumstance to set aside the sentence awarded to him and allowing him to undergo sentence to which has already undergone, subject to payment of further fine in the sum of ₹5,000/-. In that view of the matter, following order would subserve the interest of justice:

ORDER

- (i) CRA-S-502-SB of 2005 is partly allowed;
- (ii) Judgment and order of conviction under Section 15 of the NDPS Act is confirmed;
- (iii) Judgment and order of sentence awarded by the learned trial Court sentencing the appellant to undergo rigorous imprisonment for 2 months is set aside and modified to the one which has already undergone by him as observed in Para 7 of the judgment of the learned trial Court. The appellant shall pay fine in the sum of ₹5,000/- in addition within a period of one year from today.

(A.B. CHAUDHARI)
JUDGE

February 16, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No