

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

Crl. Appeal No.S-1429-SB of 2016 (O&M)

Date of Decision: March 23, 2017

Ravi Sharma @ Bobby

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanyam Malhotra, 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 and order of sentence dated 09.03.2016 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹4,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Sections 22(a) and 22(b) of the NDPS Act each. Both the sentences were ordered to run concurrently.

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

on 2.9.20013, SI Jagdev Singh along with other police officials was present in connection with patrolling duty and they were going from Nabha Road, Malerkotla towards Nushera on the pavement of drain. When they reached 1 Km ahead from the drain, then the accused was seen coming on foot, carrying a polythene in his right hand. At the sight of the police, he tried to retract but was apprehended. He disclosed his name as Ravi Sharma. Then SI disclosed his identity. He also conveyed his desire of search as he was apprehending some intoxicant material in his possession. He also apprised him of his legal right to get the search conducted from a Magistrate or Gazetted Officer but the accused reposed faith in him and his consent memo was prepared and was also signed by him. From the search of polythene carry bag, 15 strips of Parvon Spas each strip containing 10 capsules (total 150 capsules) were recovered. Two strips of 10 capsules each were separated. On further search, 8 vials of Rexcof syrup each containing 100 ml were recovered. Two vials of 100 ml each were separated therefrom. He converted into parcels all the samples and bulk property and sealed all the six parcels with his seal bearing impression 'JS'. The sample seal was also prepared. Seal after use was entrusted to HC Kashmir Singh. The articles were taken into possession vide seizure memo. The accused could not produce any license or permit for keeping the said articles in his possession. Ruqa was written and sent to police station through HC Paramjit Singh for the registration of the case on the basis of which formal FIR was registered by ASI Gurmej Singh. The accused was arrested and intimation regarding his arrest was sent. Arrest-cumintimation memo was prepared. Rough site plan was drawn. Personal search of the accused was conducted vide separate memo. Report U/s 57 of NDPS Act was also prepared. On return to police station, the accused and case property were produced before Inspector/SHO Parminder Singh who verified the facts and on his satisfaction, he put his seal "PS" thereon. On his direction, the case property was deposited with MHC Pinder Singh. Then on 3.9.13, the case property and the accused were produced before the Id. Area Magistrate, Malerkotla where representative samples of one strip of 10 capsules and one vial of Rexcof syrup containing 100 ml were drawn after opening the parcels of bulk property. Thereafter, the Id. Area Magistrate re-sealed the bulk property and sealed the representative samples with his seal bearing impression 'RC'. Inventory was also prepared. Photographs were also taken. The Id. Area Magistrate passed an order to deposit the case property in Judicial Malkhana, Sangrur. The case property could not deposited with the Judicial Malkhana on that day due to non-availability of copy of order and same was re-deposited in Police Malkhana. Then on 5.9.13, after obtaining the copy of the order of the Court, the case property was produced before the Id. CJM and the case property deposited

with Judicial Malkhana except two sample parcels of Rexcof syrup and Parvon Spas capsules for sending the same to the office of Chemical Examiner which were deposited in Police Malkhana. Both the sample parcels were deposited through C Paramjit Singh on 11.9.13 with the CFSL. On receipt of the report of Chemical Examiner that the contents of sample parcel of Parvon Spas capsules were containing Dextropropoxyphene hydrochloride salt and that the contents of sample parcel of Rexcof syrup were containing Codeine Phosphate salt and after completion of all the other legal formalities, report under section 173 Cr.PC was forwarded to Special Court for trial.”

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 22 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Inspector Parminder Singh, PW-2 Constable Paramjit Singh, PW-3 SI Jagdev Singh, PW-4 Head Constable Kashmir Singh and PW-5 Head Constable Bhinder Singh

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.

No witness was examined in defence.

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 100 ml. of Rexcof syrup containing Codeine Phosphate salt and 10 capsules of Parvon Spas containing Dextropropoxyphene hydrochloride salt have been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is first offender and suffering from criminal proceedings since 2013. Learned counsel for the appellant next contended that appellant has already undergone 9 months 12 days 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.

I have heard learned counsel for the appellant as well as learned 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 09.03.2016 passed by learned Judge, Special Court, Sangrur, 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 stated to be first offender and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 9 months and 12 days

commercial quantity i.e. 100 ml. of Rexcof syrup containing Codeine Phosphate salt and 10 capsules of Parvon Spas containing Dextropropoxyphene hydrochloride salt, 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 Ravi Sharma @ Bobby is on bail, his bail/surety bonds stand discharged.

March 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No