

CRA-S-794-SB-2005

[1]

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

(Sr. No.336)

CRA-S-794-SB-2005

Date of Decision:-May 10, 2017

Gurvinder Singh alias Ginder

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : None for the appellant.

Mr. Arjun Singh Yadav, AAG Haryana.

A.B. Chaudhari, J. (Oral)

Being aggrieved by the impugned judgment and order dated 17.03.2005 passed by the Additional Sessions Judge, Kurukshetra by which the learned trial Judge has convicted the appellant-Gurvinder Singh alias Ginder for offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') and sentenced him to undergo rigorous imprisonment for 01 year and 07 months and to pay a fine of ₹19,000/- and in default of payment of fine to further undergo rigorous imprisonment for 06 months, the present appeal was filed by the appellant-Gurvinder Singh alias Ginder in this Court.

None for the appellant.

I have perused the record and seen the impugned judgment of the trial Court and reasons recorded therein. It is the case of the prosecution that on 07.03.2004 the appellant-Gurvinder Singh alias Ginder was spotted coming from Bus-Stand, Shahabad and carrying a yellow coloured polythene bag in his left hand and he was on foot. After seeing the police party he turned

backward and started walking briskly. He was arrested. The police officer gave him option about search by Magistrate or Gazetted Officer. On his consent, the police officer conducted search and the appellant-Gurvinder Singh alias Ginder was found in possession of Charas weighing 390 grams in a polythene bag which was wrapped in old cloth. Two samples weighing 10 grams each were collected and sent to the Forensic Science Laboratory for test and, therefore, challan was filed in the trial Court. Thereafter, the prosecution examined the prosecution witnesses. The learned trial Court finally convicted the appellant-Gurvinder Singh alias Ginder as above.

The learned trial Court has recorded the finding in relation to the compliance of Section 50 of the Act that there was full compliance thereof made by the Investigating Officer. The finding has been recorded in Para-5 of the impugned judgment, which I quote hereunder:-

“5. ASI Parveen Kumar (PW7) is the Investigating Officer. He has spoken about his presence alongwith other police officials at bus-stand, Shahabad. It was on 07.03.2002. He is specific about the date, venue and the circumstances in which the accused was suspected of possessing some narcotic material. He is specific about serving of notice (Ex. PC) under Section 50 of the Act upon the accused vide which he (accused) was informed about his rights to be searched before a Magistrate or a Gazetted Officer, giving option (Ex.PC/1) by the accused vide which he showed his faith in the I.O. He is also specific about the details of the recovery, drawing of the samples and sealing of the samples as also the residual contraband in separate parcels, retaining of specimen seal impressions and thereafter taking the samples, residual contraband and the specimen seal impressions into possession via recovery memo. (Ex.PD), after use of the seal handing over the same to HC Balbir Singh. This witness had also proved rough-

site plan (Ex.PH) of the place of recover. He recorded the statements of the witnesses under Section 161 CrP.C. and after apprising the grounds of arrest vide memo. (Ex.PE) he had formally arrested the accused in the present case. After completion of the investigation at the spot, this witness had produced the accused alongwith the case property, samples and the specimen seal impressions as also the witnesses and the report under Section 57 (Ex.PF) before SI/SHO Avtar Singh of Police Station, Shahabad, at Barara Chowk, Shahabad. He is specific that after verifying the facts from the accused and the witnesses SI/SHO Avtar Singh had affixed his own seal 'AS' on both the sealed parcels as also on the specimen seal impressions and had made his endorsement (Ex.PF/1) on the report (Ex.PF). He has proved the residue of the contraband as Ex.P1 and the parcels of samples as Exs.P2 and P3. ”

Looking to the above discussion, I am inclined to concur with the finding of fact which is based on evidence to hold that there was compliance of Section 50 of NDPS Act in the matter of search, seizure and recovery.

The trial Court has sentenced the appellant-Gurvinder Singh alias Ginder to undergo rigorous imprisonment for 01 year and 07 months as above. It is not in dispute that the quantity of contraband namely Charas that was seized was 390 grams as against the commercial quantity which is 1 Kg. The appellant has already undergone the custody of 03 months and 19 days as under trial and thereafter since he could not make payment of fine from the date of impugned judgment of the trial Court i.e. 17.03.2005 till he was ordered to be released on bail vide order dated May 02, 2005 passed by this Court.

In my opinion, looking to the quantity of Charas that was seized namely 390 grams as against 1 Kg. prescribed as commercial quantity, this circumstance becomes a mitigating circumstance for reduction of sentence. At any rate, the occurrence took place in the year 2004 and it would be harsh to send the appellant-Gurvinder Singh alias Ginder again in jail after so many years to serve out the remaining sentence. The appellant does not deal in the regular sale-purchase of the contraband and the sentence that is already undergone by him as under trial would subserve the interest of justice. However, the appellant will have to pay the balance amount of fine i.e. ₹9,000/- (fine of ₹10,000/- has already been paid at the time of granting bail) out of total fine of ₹19,000 awarded by the trial Court. In the result, I make the following order:-

ORDER

1. CRA-S-794-SB-2005 is partly allowed.
2. The impugned judgment dated 17.03.2005 passed by the Additional Sessions Judge, Kurukshetra by which the learned trial Judge convicted the appellant-Gurvinder Singh alias Ginder for offence under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 is confirmed.
3. The impugned order awarding sentence dated 17.03.2005 passed by the Additional Sessions Judge, Kurukshetra by which the appellant-Gurinder Singh alias Ginder was sentenced to undergo rigorous imprisonment for 01 year and 07 months and to pay a fine of ₹19,000/- and in default of payment of fine to further undergo rigorous imprisonment for 06 months is set aside and modified to the one that he has already undergone.
4. The appellant shall, however, pay the balance amount of fine i.e.

₹9,000/- out of total fine of ₹19,000/- (₹10,000/- has already been deposited at the time of getting bail) within 6 months from today, failing which the appellant-Gurinder Singh alias Ginder will have to undergo simple imprisonment for one month.

5. Disposed of.

May 10, 2017

(A.B. Chaudhari)
Judge

Pankaj	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No