

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

CRA S-115-SB of 2015.

Date of Decision: 12.05.2017.

Kala Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : None for the appellant.

Mr. Luvinder Sofat, AAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 17.12.2014 passed by Judge, Special Court, Fazilka vide which the appellant was convicted under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the Act”) and sentenced to undergo RI for one year and to pay fine of Rs.5000/- with default stipulation.

In brief the case of the prosecution as mentioned in the judgment passed by the trial Court is as under:-

“Briefly prosecution story is that on 30.05.2012, ASI Gurcharan Singh, Investigating Officer (in short IO) along with HC Vinod Kumar and other police officials in connection with patrol duty on private vehicle were going from city area Abohar to Bahawal

Bassi and when the police party reached half KM ahead of Abohar Malout Bye pass, one person was seen coming who on seeing the police party got nervous and turned towards his left side in the fields. On suspicion, the said person was apprehended. On interrogation, he disclosed his name as Kala Singh son of Boor Singh resident of Pacca Seed Farm Abohar. Then IO tried to join independent witness but none was available. Then IO introduced himself to the accused about his rank and posting and other police officials and he also asked the accused that he has suspicion of some intoxicant with him. So, his personal search is to be conducted and then IO also appraised the accused about his legal right to get his search conducted in the presence of any Magistrate or gazetted officer and he can make arrangement. The accused reposed his faith on the IO. Then IO prepared consent memo which was signed by the accused and witnessed by HC Vinod Kumar and HC Bhupinder Singh. Then IO conducted the search of the accused and smack wrapped in glazed paper was recovered from the left side pocket of his trouser. After arranging the weighing material and then separated two samples of 01 gram each of smack recovered

from the accused and made parcels thereof by putting the same in plastic dibbis. The rest on weighment came out to be 48 grams of smack along with plastic envelop and made parcel thereof by putting the same in another plastic dibbi. Then IO sealed the sample parcels and bulk parcel with his seal impression 'GS' and also prepared form M-29 at the spot on which IO affixed his seal impression of 'GS'. The seal after use was handed over to HC Vinod Kumar by him. Then the sample parcels, bulk parcel and form M-29 were taken into police possession vide recovery memo by the IO which was witnessed by HC Vinod Kumar and HC Bhupinder Singh. Personal search of accused was conducted which led to the recovery of currency notes of Rs.100/- which were taken into police possession vide memo of Jamatalshi. Then the IO sent ruqa to the Police Station on the basis of which formal FIR was registered by ASI Bhagwan Singh.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Section 21 of the NDPS Act was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, ASI Bhagwan Singh, PW-2, HC Vinod Kumar, PW-3 HC ASI Gurcharan Singh, IO of the case and PW-4 HC Gautam Rishi and thereafter closed its evidence.

The statement of accused was recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial Court, vide judgment and order dated 17.12.2014, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 17.12.2014, passed by the trial Court, accused has preferred the present appeal.

Though, there is no representation on behalf of the appellant, still, this Court has gone through the case file and scanned the entire evidence. It has come in the case of the prosecution that recovery of 50 grams of smack was effected from the conscious possession of the appellant. PW-3, ASI Gurcharan Singh, I.O. has proved all minute details as well as the factum of recovery from the conscious possession of the appellant. The factum of recovery has also been corroborated by PW-2 HC Vinod Kumar, witness of recovery.

The provisions of Section 50 of the Act have been complied with. Form

M-29 was prepared on the spot. Both the PWs were cross-examined at length by the learned defence counsel but nothing could be elicited from their testimony to shake their credibility. The appellant has simply denied the case of the prosecution. He has not furnished any explanation as to how the contraband came into his possession. This Court finds no flaw in the judgment of conviction passed by the trial Court. Consequently, the same is upheld.

Now reverting to the quantum of sentence, it has come on record that the appellant is a labourer; he is the sole bread winner of his family; the recovery is of 50 grams of smack and; the appellant has been facing the agony of criminal protracted proceedings since 2012. Therefore, taking into consideration all these mitigating factors, the sentence of the appellant is reduced from one year to nine months subject to enhanced payment of fine of Rs.10,000/- to be paid to the State Government within a period of three months from today.

In view of above, the present appeal is partly allowed in the manner indicated.

12.05.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No