

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

**Crl. Appeal - S – 1830 – SB of 2016
Date of Decision:- 16.12.2017**

Balwinder Singh alias Kaka

....Appellant

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Yaspal Malik, Legal aid counsel.

Mr. N.K. Banka, DAG, Punjab.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 05.03.2016 passed by learned Judge, Special Court, Ludhiana. The appellant was held guilty under Section 15 of the N.D.P.S Act, 1985 and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month.

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

“That on 16.3.2012 ASI Jagjit Singh along with other members of the police party were going from Village Akalgarh to Village Rattowal in connection with patrolling duty and when they reached at Pulli Sem near Rattowal, then one person along with one plastic bag lying on his head was seen coming from

the opposite side, who on seeing the police party tried to turn back. He was apprehended on the basis of suspicion. On being asked, he disclosed his name as Balwinder Singh son of Mohinder Singh. ASI Jagjit Singh disclosed his identity to him and told him that he has suspicion that there is some objectionable article in his possession in the plastic bag and he wants to conduct search of said plastic bag lying on his head. ASI Jagjit Singh also told him that he had legal right to get his search conducted from some Gazetted officer or Magistrate and if he so desire, then the arrangement thereof could be made but the accused reposed faith in ASI Jagjit Singh and opted for search from him. Then ASI Jagjit Singh prepared his consent memo which was thumb marked by the accused Balwinder Singh and the same was witnessed by other police officials. ASI Jagjit Singh tried to join independent witness but everybody showed their inability and did not join the police party. After that the plastic bag was searched by the Investigating Officer and on opening the mouth of the bag, poppy husk was recovered. Two samples of 100 gms. each from the said poppy husk were taken and prepared its sample parcels and prepared the parcel of remaining 08 Kgms. poppy husk after putting it in the same plastic bag. Then ASI Jagjit Singh sealed the two sample parcels and one bulk case property parcel with his seal bearing impression “JS”. ASI Jagjit Singh also prepared specimen seal impression on CFSL

form and seal after use was handed over to HC Jaswinder Singh. All the parcels were taken into possession by ASI Jagjit Singh vide memo which was witnessed by above said witnesses. ASI Jagjit Singh prepared rough site plan with correct marginal notes and arrested the accused and the intimation of his arrest was given to his relatives and arrest-cum-intimation memo was prepared and witnessed by above said witnesses. ASI Jagjit Singh also prepared inventory report and recorded the statements of witnesses. On reaching the police station, the entire case property along with the accused and witnesses were produced before ASI Gulab Singh. Sample was sent to the laboratory. On receipt of chemical examiner report and after completion of all the formalities of investigation, challan against the accused was presented in the court.”

Upon presentation of the challan, copies of the report under section 173 Cr.P.C. and other relevant documents were supplied to the accused free of costs as envisaged under section 207 Cr.P.C.

After hearing learned Addl. PP for the State, learned defence counsel and after going through the documents placed on record by the prosecution, a prima facie case for the offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 was made out against the accused for keeping in his possession 8 Kgms 200 Grams of poppy husk without any permit or license on 16.3.2012 in the area of village Rattowal, so a separate charge sheet was served upon him for the offence under section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985, to

which the accused pleaded not guilty and claimed trial.

In order to prove its case against the accused that he was found in possession of 8 Kgms 200 Grams of poppy husk without any permit or licence, the prosecution examined ASI Gulab Singh as PW1, SI Jagjit Singh as PW2, HC Jaswinder Singh as PW3, HC Gurdeep Singh as PW4, ASI Gurmeet Singh as PW5 and closed the prosecution evidence. The prosecution also proved on record affidavit of ruqa as Ex.PA, consent memo as Ex.PB, recovery memo as Ex.PC, fard jama talashi as Ex. PD, arrest memo as Ex.PE, Intimation of arrest memo as Ex. PF, Site plan Ex.PG, Inventory report as Ex.PI, Sample seal as Ex.P1, FSL report Ex.PX besides other documents.

After closure of the prosecution evidence, the statement of the accused under section 313 Cr.P.C. was recorded, wherein he has denied all the incriminating material put to him being incorrect. The accused pleaded that he is innocent and has been falsely implicated and nothing was recovered from his possession. In defence, no witness was examined by the accused and he closed the same.

Learned trial Court after appreciating the evidence vide its impugned judgment and order, convicted and sentenced the accused as stated above.

Learned legal aid counsel appearing for the appellant submits that the appellant after completing his sentence has been released and fine has already been paid.

Learned State counsel has produced custody certificate issued by Manjit Singh Tiwana, PPS, Deputy Superintendent, Central Prison,

Ludhiana, which is taken on record. As per the said certificate, the appellant has already undergone his sentence and has paid the fine. He was released on 04.08.2016.

After hearing learned counsel for the parties, this Court is of the view that no further interference in the present appeal is required and, therefore, the present appeal is disposed of having been rendered infructuous.

December 16, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No