

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

Crl. Appeal No.S-1139-SB of 2017 (O&M)

Date of Decision: April 06, 2017

Raj Singh alias Raja

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Prashant Sethi, 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 25.01.2016 passed by learned Sub Divisional Judicial Magistrate, Samana, whereby the appellant was held guilty and convicted and sentenced to undergo simple imprisonment for a period of six months and to pay fine of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of 15 days under Section 21 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Sub Divisional Judicial Magistrate, Samana, are as under:-

“The present case against the accused is based upon charge under section 21 of Narcotic Drugs and Psychotropic

Substances Act, 1985 (for brevity 'NDPS Act') against the accused for having been found in possession of 5 Gram Smack. Case FIR was registered. After arrest of accused and completion of investigation, challan against accused was presented in the court.”

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

In support of its case, prosecution examined PW-1 Head Constable Didar Singh, PW-2 Constable Mohan Singh, PW-3 ASI Satnam Singh and PW-4 ASI Shamsheer 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 5 grams smack has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2012. Learned counsel for the appellant next contended that appellant has already undergone 2 months and

23 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 25.01.2016 passed by learned Sub Divisional Judicial Magistrate, Samana, 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 suffering from long protracted criminal proceedings since 2012 i.e. for the last about 5 years and further in view of the fact that appellant has already undergone actual sentence of 2 months and 23 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 5 grams smack, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine imposed upon the appellant is also reduced and he is directed to pay a fine of ₹2000/- instead of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of 15 days.

Accordingly, present criminal appeal stands partly allowed.

Appellant Raj Singh alias Raja, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

April 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No