

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

Crl. Appeal No.S-114-SB of 2017 (O&M)

Date of Decision: March 20, 2017

Radha

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Sidhu, 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 07.12.2016 passed by learned Judge, Special Court, Bathinda, 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 ₹5,000/- and in default of payment of fine, to undergo imprisonment for a period of one month under Section 15 of the NDPS Act.

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

“2. Briefly stated the facts of the FIR are that on 31.3.2012 ASI Fauja Singh along with HC Ranjit Singh and other police officials on government vehicle bearing No. PB-03W-5982 were going from village Maur Khurd to Rajgarh Kube, in

connection with patrolling and checking of suspected persons. When police party reached on the bridge of canal minor, the accused was noticed coming on the right bank of the canal while carrying a plastic bag on her head, who on seeing the police party got perplexed and after throwing the plastic bag tried to turn towards wheat crop fields. On suspicion, ASI Fauja Singh apprehended the accused with the help of other police companions. In the meantime Karam Singh son of Kehar Singh, r/o village Kotli came there on cycle and he was joined in the police party. On asking the accused disclosed her name as Radha wife of Satnam, r/o Chaklodha (MP). Due to fall, the mouth of the plastic bag got open and poppy husk was visible in the same. 100 grams poppy husk was taken out as sample and was converted into a parcel. The remaining on weighing came to be 20 Kgs, which was also converted into a parcel. Both the parcels were sealed by ASI Fauja Singh with his seal bearing impression "FS". Sample seal was separately prepared and seal after use was handed over to HC Gurcharan Singh. Both the parcels were taken into possession vide separate memo, attested by the witnesses. Personal search of the accused was got conducted from LC Kirpal Kaur. Ruqa was sent to the police station on the basis of which FIR under Section 15 of NDPS Act was registered against the accused. Site plan of place of recovery was prepared. Accused was arrested. Statements of the witnesses were recorded. On return to police station, ASI Fauja Singh produced accused along with the case property before ASI Gurmail Singh, officiating SHO. The sample parcel was sent to the chemical examiner through HC Gurcharan Singh and chemical examiner report 3 was obtained. After completion of the investigation, the challan against the accused was presented in the Court...."

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to her under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which she pleaded not guilty and claimed trial.

In support of its case, prosecution examined ASI Gurmail Singh (Retired) officiating SHO, PW2 ASI Fauja Singh, Investigating Officer, PW3 Head Constable Gurcharan Singh and PW4 Rajiv Grover, Stenographer.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. She was confronted with the evidence of the prosecution and she denied the correctness of the evidence and pleaded herself as innocent and her 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 20 kgs. of poppy husk 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. He further contended that the appellant is poor person and first offender. Learned counsel for the appellant next contended that appellant has already undergone 5 months and 1 day 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 07.12.2016 passed by learned Judge, Special Court, Bathinda, 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 a poor person, first offender and 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 5 months and 1 day and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 kgs. of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by her. However, the sentence of fine and in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Radha, who is in custody, be set at liberty forthwith, if her custody is not required in connection with any other case, subject to payment of fine, if already not paid.

March 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No