

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

Crl. Appeal No.S-1206-SB of 2017 (O&M)

Date of Decision: November 15, 2017

Bagga Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjiv Kumar Yadav, Advocate
for the appellant.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction dated 14.02.2017 and order of sentence dated 16.02.2017 passed by learned Addl. Sessions Judge, Ambala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and six months and to pay fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Ambala, are as under:-

“2) Prosecution case as unfolded by the report/complaint of the complainant SI Karan Singh, wherein he had stated that on

22.12.2015 he alongwith other police officials was present at Pili Kothi, Ambala City and in the meantime, a boy was seen coming from the side of Layalpur Basti, who was carrying a plastic bag of white colour in his right hand and after seeing the policy party, he thrown the bag and tried to run away. The said boy was apprehended and on inquiry he disclosed his name as Bagga Singh. On checking of bag 7 Kgs. 400 Gms. Poppy Straw was recovered. On the basis of this complaint, formal FIR of the present case was registered. During the investigation, accused was arrested and was taken into custody. After completion of necessary formalities of investigation report under section 173 Cr. P.C. was submitted against the accused for trial.”

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

In support of its case, prosecution examined PW-1 ASI Bir Bhan, PW-2 Head Constable Sahab Singh, PW-3 EASI Waryam Singh, PW-4 SI Prem Chand, PW-5 Inspector Rajnish, PW-6 EHC-Amar Singh, PW-7 SI Karan Singh, PW-8 Constable Jai Parkash, PW-9 ASI Yog Dhayan and PW-10 Veena Sharma. The prosecution also tendered documents Ex.P1 to Ex.P20.

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 that he has been falsely implicated. No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

After hearing learned counsel for the appellant as well as

learned State counsel and after going through the record, I find that the present appellant has been apprehended on the spot with poppy husk weighing 7 kgs. 400 grams. Learned counsel for the appellant argued that FSL report cannot be believed as percentage of the ingredients found in the sample have not been mentioned. I have gone through the FSL report Ex.P4. The FSL has given clear opinion that poppy straw (chura post) has been found on analysis of the sample. There is nothing on the record to disbelieve the FSL report. Learned counsel for the appellant has not pointed out any material discrepancies or improbabilities in the version of the prosecution, which may go to the root the case.

I have gone through the statements of the PWs. The PWs have consistently deposed regarding the material facts. There is nothing in their cross-examinations, which may make their statements unreliable. All the provisions of the NDPS Act have been complied with. Link evidence is also complete.

Learned counsel for the appellant also argued that there is no compliance of Section 42 of the NDPS Act. The perusal of the record shows that in the present case, there is chance recovery. There is no secret information with the prosecution against the accused. Therefore, question of compliance of provision of Section 42 of the NDPS Act does not arise.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 14.02.2017 passed by learned Addl. Sessions Judge, Ambala, is correct, as per law and does not require any interference from this Court.

Learned counsel for the appellant, in the alternative, prayed for

reduction of the sentence imposed upon the appellant. Learned counsel for the appellant contended that appellant is poor person, first offender and only bread earner of the family and the recovery from the appellant falls under non-commercial quantity and the appellant has already undergone actual sentence of more than six months. He further contended that the appellant is suffering from the criminal proceedings since 2015.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be poor person, first offender, only bread earner of the family and further in view of the fact that appellant has already undergone actual sentence of more than 6 months and he is suffering from criminal proceedings since 2015 i.e. for the last two years, and keeping in view the fact that the recovery from the accused-appellant falls under non-commercial category i.e. 7 kgs. 500 grams of poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same. The appellant is directed to pay the fine within one month from receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Bagga Singh is on interim bail, his bail/surety bonds stand discharged.

November 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No