

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

(1) Crl. Appeal No.S-1525-SB of 2017 (O&M)

Sonu

...Appellant

VERSUS

State of Haryana

...Respondent

(2) Crl. Appeal No.S-1622-SB of 2017 (O&M)

Mehar Singh

...Appellants

VERSUS

State of Haryana

...Respondent

Date of Decision: November 13, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, Advocate
 for the appellant (in CRA No.S-1525-SB of 2017).

 Mr.G.S.Sandhu, Legal Aid counsel
 for the appellant (in CRA No.S-1622-SB of 2017).

 Mr.B.S.Virk, Deputy Advocate General, Haryana
 for the respondent-State.

INDERJIT SINGH, J.

By this common judgment, both the above-stated appeals,
arising out of the same judgment, are being decided.

Accused-appellants Sonu and Mehar Singh have filed the
appeals against the judgment of conviction dated 11.07.2017 and order of

sentence dated 12.04.2017 passed by learned Judge, Special Court, Karnal, whereby they were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- and in default of payment of fine to further undergo simple imprisonment for a period of three months each 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, Karnal, are as under:-

“2. Brief facts of the case of prosecution are that on 01.02.2014 PW3 ASI Surender Singh along with PW1 EASI Ram Mehar, HC Rajnish Kumar, EHC Satish Kumar, C. Surjit Singh were present at a Chowk, near Govt. School on the road leading to Ranjit Nagar, Nissing in Government Vehicle bearing registration no. HR30-H-0100 being driven by driver C. Virender Singh in connection with patrolling duty and crime detection. In the meanwhile, one car was seen coming from the side of Village Dacher. Then PW3 ASI Surender Singh investigating officer had gave signal with torch to the driver of the said car to stop the said car, but on seeing the police party, the driver of the said car tried to turn the said car back. On which PW3 ASI Surender Singh investigating officer apprehended the said car along with driver and one other person who was sitting on the conductor side of the said car with the help of other police party. On interrogation, the driver of the said car disclosed his name as Mehar Singh @ Ladi son of Ajit Singh, Caste Jat Sikh, resident of Dera Nihang Sikh Dachar and the person who was sitting on the conductor side disclosed his name Sonu son of Deep Chand, Caste Oad Rajput, resident of Ward No.6, Nissing. On checking of the registration number of the said car, it was found to be HR05-AH-1813 Make Tavera of white colour. On checking of the said car from inside, two plastic bags of white colour were found lying on the rear seat of the said car. Thereafter, ASI Surender Singh, investigating officer asked both these persons that he has the suspicion that they are having some narcotic drug in their possession in the said plastic bags and if they want to get the search of said two bags conducted in presence of Gazetted Officer or Magistrate, he has the right to do so. A joint notice under section 50 of the NDPS Act Ex.PA was given to both these persons, which was read over and explained to both the accused. Both the accused, after thinking for about 15 minutes, disclosed that they do not want to get the search of their two plastic bags conducted from

any higher officer and they have faith in the police party. Their consent under section 50 of the NDPS Act Ex.PB was prepared and thereafter search of two bags was conducted. Memo of consent was prepared and thereafter, the said bags were searched in which poppy husk was found, out of which two samples of 200 grams from each bags were separated and the remainder on weightment came to be 19 Kgs 600 of poppy husk in each bag and then the samples as well as the remainder were sealed with the seal of SK and were take in to police possession vide recovery memo Ex.PC. The car in question was also taken in to police possession by the investigating officer vide recovery memo Ex.PE. Other formalities of investigation were conducted. Formal FIR was got registered. During investigation, site plan Ex.PJ of the spot was prepared, statements of witnesses were recorded and accused was arrested. The case property, witnesses and accused were produced before the SHO/Inspector Jagdish Singh. On the same day, both the accused along with the case property and witnesses was produced in the court and the orders of the court under Section 52-A of the Act Ex.PN were obtained. One part of sample and sample seals were deposited in the malkhana and another part of sample along with sample seal were deposited with Police Station Nissing, Karnal. On 03.02.2014, the sample was sent to the FSL, Madhuban for analysis and after receipt of the analysis report, challan under section 173 Cr.P.C. against both the accused was prepared and submitted before this court.”

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

In support of its case, prosecution examined PW-1 EASI Ram Mehar, PW-2 ASI Balwinder Singh, PW-3 ASI Surender Singh, Investigating Officer, PW-4 Harvinder Singh, PW-5 ASI Satyawan, PW-6 ASI Lakhwant Singh, PW-7 Inspector Jagdish Singh and PW-8 Shamsher Singh.

At the close of prosecution evidence, the accused-appellants

were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent and their 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 appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 40 kgs. of poppy husk has been recovered from the accused-appellants, which falls under non-commercial quantity. He also contended that the appellants are only bread earners of their respective families and they are suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellants have already undergone more than 7 months of actual sentence including remission.

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 11.04.2017 passed by learned Judge, Special Court, Karnal, 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 appellants are stated to be only bread earners of their respective families and suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellants have already undergone actual sentence of more than 7 months including remission and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 40 kgs. of poppy husk, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same. The appellants are directed to pay the fine within one month from the date of 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, the present criminal appeal stands partly allowed.

Since, appellants Sonu and Mehar Singh are on bail, their bail/surety bonds stand discharged.

November 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No