

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

Crl. Appeal No.S-1751-SB of 2017 (O&M)

Date of Decision: July 19, 2017

Bhola Shekhar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tarun Dhingra, Advocate
for the appellant.

Mr.Parveen Aggarwal, 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 and order of sentence dated 20.04.2017 passed by learned Addl. Sessions Judge, Karnal, 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 rigorous imprisonment for a period of one month under Section 21(b) of the NDPS Act.

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

“2. Brief facts of the case of prosecution are that on 28.8.2014, ASI Singh Raj, alongwith HC Ram Niwas and Ct. Sanjay, was going from P.P. Ram Nagar, Karnal to WJC Canal, Kaithal

Road on two motorcycles for patrolling duty, when they reached in front of Petrol Pump, Shiv Colony, Karnal, then, one person was seen coming on foot from the side of WJC Canal by carrying a plastic polythene in his right hand and on seeing the police party, he took a U-turn and started to walk briskly. He was apprehended on the basis of suspicion. On interrogation, he (accused) disclosed his name as Bhola Shekhar son of Sham Sunder, resident of House No.240, near Ram Nagar, Karnal. ASI Singh Raj told him that he had a suspicion that he was having some narcotic drug in the polythene and if he (accused) wanted to get his search conducted in the presence of Gazetted Officer or Magistrate etc., then, he had a right to do so. Accused was served with a notice under Section 50 of NDPS Act, which was read over and explained to him. After thinking for ten minutes, accused gave his reply that he wanted to get his search conducted from the Investigating officer himself. Thereafter, on checking the polythene bag, 10 grams smack was found, out of which, two samples of one gram each were separated and converted into parcels and sealed with the seal of NC and remaining smack i.e. 8 grams was converted into separate parcel and sealed with the seal of NC and taken into police possession. Seal after use was handed over to HC Ram Niwas. Thereafter, ASI Singh Raj sent ruqa to the police station through Ct. Sanjay for registration of the case, on the basis of which, formal FIR was registered. Thereafter, on his request, second IO namely ASI Satpal Singh had been deputed for further investigation. ASI Singh Raj handed over the accused, case property and witnesses to ASI Satpal Singh. Statements of witnesses were recorded. Accused Bhola Shekhar was arrested. Report under Section 55 of NDPS Act was prepared and the case property, witnesses and accused were produced before the SHO. Thereafter, SHO after verification affixed his seal of RS on the sample parcels and remaining case property and, instructed ASI Satpal Singh to deposit the case property with MHC and to lodge the accused in lock up.

3. On 29.8.2014, accused alongwith the case property had been produced in the court by moving an application under Section 52-A of the Act. Inventory was also prepared. Photograph of accused alongwith case property was taken. The certificate of the court under Section 52-A of the Act was obtained. One part of sample and sample seals were deposited in the malkhana P.S. City, Karnal. 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 the accused was prepared and submitted before this court.”

On presentation of challan against accused-appellant, copies of

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 ASI Singh Raj, Investigating Officer, PW-2 EASI Satpal Singh, PW-3 Constable Sanjay, PW-4 ASI Ravinder Kumar, PW-5 Kiran Kumar, PW-6 Head Constable Ram Niwas, PW-7 EASI Azad Singh, PW-8 Prabhat Singla, PW-9 Inspector Randhir Singh and PW-10 SI Shamsher 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 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 10 grams of smack has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is first offender, only bread earner of the family and suffering from criminal proceedings since 2014.

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 20.04.2017 passed by learned Addl. Sessions Judge, 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 appellant is stated to be poor person, only bread earner of the family and suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 10 grams of smack, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of four and half months months instead of one year under Section 21 of the NDPS Act. However, sentence of fine and in default thereof shall remain the same.

With the above-said modification in the sentence, the present appeal stands dismissed.

July 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No