

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

Crl. Appeal No.S-1904-SB of 2017 (O&M)

Date of Decision: September 05, 2017

Rajinder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Barnala, Advocate
for the appellant.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, 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 dated 10.04.2017 and order of sentence dated 12.04.2017 passed by learned Judge, Special Court, Moga, whereby the appellant along with co-accused 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 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 Judge, Special Court, Moga, are as under:-

“2. Succinctly stated, the case of the prosecution is that on 17.02.2014 ASI Gurpal Singh along with some other police

officials had gone towards village Jhande Wala, Budh Singh Wala and Sandhuana Wala for patrolling. When the police party had reached the bus stand of village Budh Singh Wala, Jaswinder Singh son of Charan Singh, resident of village Chugha Kalan met the police officials and he was joined in the police party. When the police party turned towards the link road leading to village Sandhuana Wala, the police party spotted a motor-cycle and they had kept a plastic bag between them. ASI Gurpal Singh had stopped the said motor-cycle. On being inquired the person, who was on the driver seat of the motor-cycle disclosed his name as Rajinder Singh son of Sukhdev Singh, resident of Street No.9, Mohalla Angatpura and the person sitting on the pillion seat disclosed his name as Gurjit Singh alias Kali son of Chattarpal Singh, resident of Bahadur Ke, Police Station Jagraon. ASI Gurpal Singh told them that he was having suspicion that there is some intoxicating substance in the plastic bag carried by them and he wanted to conduct the search of the said bag as well as their personal search. ASI Gurpal Singh apprised them of their legal right to get their personal search as well as search of the bag conducted in the presence of a Gazetted officer or Magistrate. Both of them reposed confidence in ASI Gurpal Singh and gave the consent for search of the plastic bag as well as their personal search by him. ASI Gurpal Singh had prepared separate consent memo regarding both the accused. They had apprehended their signatures on the said memo. Thereafter, ASI Gurpal Singh conducted the search of the said bag. He found that the same contained poppy husk. He had taken out 250 grams of material to serve the purpose of sample. On weighment of the bag with residue therein, the same was found to be 19 kg. 750 grams. He had converted the sample as well as bulk material into parcels and sealed the same with his seal bearing impressions "GS". He has prepared form No.29 M on the spot and had affixed sample seal therein. After use, he handed over his seal to HC Daljit Singh. He took the case property and the motor-cycle in question in his possession vide a separate memo. Thereafter he sent ruqa to the Police Station and on the basis of said ruqa, FIR No.34 dated 17.02.2014 under Section 15 of the Act was registered against the accused at Police Station, City South, Moga. ASI Gurpal Singh prepared rough site plan of the place of recovery and recorded the statements of witnesses. He had arrested the accused, conducted their personal search and prepared memos in this regard. On return to the Police Station, he produced the accused as well as case property before SI Jagdish Lal, Station House Officer, Temporary Police Station, Charick. SI Jagdish Lal verified the facts of the case and had affixed his seal bearing impression "JL" on the parcels as well as CFSL form. On verification, it has been found that the motor-cycle in question was owned by accused Rajinder Singh. On the next day, SI Jagdish Lal produced the

accused as well as case property before the court of Chief Judicial Magistrate, Moga. On police request, the learned Magistrate took out representative sample from the bags, sealed the representative sample and bag containing bulk material with seal bearing impressions "CJM". SI Jagdish Lal deposited the case property in Police Malkhana as per the order of the court. Sample was sent to the office of Chemical Examiner and report from the said office has been received. On completion of investigation, the police presented the challan against the accused before the Court."

On presentation of challan against accused-appellant along with co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused 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 Head Constable Baljinder Singh, PW-2 Head Constable Daljit Singh, PW-3 SI Jagdish Lal, PW-4 SI (Retd.) Gurpal Singh, Investigating Officer and PW-5 Constable Sandeep Singh.

At the close of prosecution evidence, the accused-appellant and co-accused 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.

In defence, accused-appellant and co-accused examined DW-1 Bikramjit Singh and DW-2 Bhinda.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant along with co-accused 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 poppy husk weighing 20 kgs. has been recovered from the accused-appellant, which falls under non-commercial category. He also contended that the appellant is sole bread earner of the family and is suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 5 months and 19 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 10.04.2017 passed by learned Judge, Special Court, Moga, 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 sole bread earner of the family 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

and keeping in view the fact the recovery from the accused-appellant falls under non-commercial category i.e. 20 kgs. 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Rajinder Singh, 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.

September 05, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No