

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

**CRA-S-1943-SB-2017 (O&M)
Date of decision : 27.09.2017**

Kashmir Singh @ Sheera

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Ms. Sushma Chopra, Advocate
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against judgment dated 05.05.2017 passed by Judge Special Court, Jalandhar vide which accused Kashmir Singh alias Sheera was convicted for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - “the Act”) and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

Feeling aggrieved, the accused – convict has filed the present appeal, which came up for hearing on 17.05.2017 when it was admitted and

recovery of fine was ordered to be stayed during the pendency of the appeal.

Briefly stated the prosecution story is that on 06.12.2006 a police party from Police Station Shahkot, Jalandhar headed by ASI – Naranjan Singh was present near the canal (minor) bridge in the area of village Bhullran. While on patrolling duty, the police party was joined by Mukhtiar Singh, an independent witness, in the meanwhile from the side of village Bhullran one scooter make Bajaj Chetak without number came, which was being driven by one clean shaven person and a young man was sitting on the pillion having a heavy plastic bag on his thigh; that the Investigating Officer signalled the scooter to stop but it was sped away, on a suspicion the scooterists were apprehended by the police party; that on being enquired the person driving the scooter disclosed his name as Mandeep Singh and pillion rider gave his name as Kashmir Singh alias Sheera; that they could not produce any document of ownership of the scooter. The plastic bag which was found to be lying on thigh of Kashmir Singh alias Sheera was checked and poppy husk was found to be contained therein. The Investigating Officer took the sample of 250 grams from the recovered bag and the remaining poppy husk on being weighed came out be 24.750 kgs., which was re-transferred in the same bag; that after preparing sample parcel, the bulk as well as the sample parcel were sealed with the seal having impression 'NS' of ASI Naranjan Singh; that sample of seal was prepared, the case property was taken into police possession, ruqa was sent to police station, which formed basis for registration of FIR. Site plan of place of recovery was prepared, on return to the police station, the Investigating Officer produced case property before SI/SHO Nirmal Singh,

who after verifying the case, sealed case property with his seal impression having letter 'NS' and deposited the same with MHC. On the next day the Investigating Officer after taking case property from MHC and accused from police lock up had produced them before Illaqa Magistrate. The case property was deposited with MHC. On receipt of report from Chemical Examiner and after completion of investigation and other formalities, challan against the accused under Section 15 of the NDPS Act was prepared and filed in the Court. It has to be taken note that accused - Kashmir Singh alias Sheera was declared proclaimed offender vide order dated 09.05.2009, later on, he was arrested on 27.02.2017 and supplementary challan was presented in the Court.

A prima facie case under Section 15 of the NDPS Act was made out against the accused, he was formally charge-sheeted, to which he pleaded not guilty and claimed trial.

In order to prove its case prosecution examined following witnesses:-

PW-1 Inspector Naranjan Singh, Investigating Officer of this case had deposed on the lines of prosecution story by proving various documents.

PW-2 ASI Amarjit Singh happened to be formal witness, who deposed with regard to case property of this case along with Form M-29, having been deposited with him while he was posted as MHC of Police Station Shahkot, Jalandhar. He further deposed that on 13.12.2006, vide rood No.293 / 21, he handed over the sample parcel in intact condition to C.Surinder Pal for depositing the same in the office of Chemical Examiner,

who after depositing the same on the same day, handed over the receipt to him. He further deposed that as long as the case property remained with him, neither he tampered with it nor allowed anybody to tamper with the same.

PW-3 SI Surinder Singh was member of the police party headed by Inspector Naranjan Singh and he has also deposed on the same lines as by Inspector Naranjan Singh.

PW-4 Mukhtiar Singh had not supported the prosecution story and was declared a hostile witness.

PW-5 HC Surinder Pal happened to be a formal witness who furnished his duly sworn affidavit Ex.PW5/A.

PW-6 Inspector Nirmal Singh has deposed to the effect that on 06.12.2016, ASI Naranjan Singh produced before him the entire case property in intact condition and after verifying the facts, he put his seal 'NS' on the sample parcel as well as case property and also put seal impression 'NS' on the sample parcel as well as case property by proving various documents in that regard.

With that the evidence of prosecution got concluded.

Statement of accused under Section 313 C r.P.C. was recorded, in which all the incriminating circumstances appearing against the accused during the prosecution evidence were put to him, to which he denied and pleaded his innocence and stated that he has been falsely implicated in this case by picking up from his house; that no recovery was effected from him.

The accused did not lead any evidence in defence.

After hearing arguments, learned Judge Special Court,

Jalandhar vide judgment dated 05.05.2017 convicted and sentenced the accused, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the parties, besides, going through the record.

Learned trial Court had framed following point for determination:-

“Whether on 06.12.2006 at about 5.15 p.m. in the area of village Bhullarn, accused – Kashmir Singh @ Sheera along with co-accused Mandeep Singh (since been acquitted) was found in conscious possession of 25 kg. of poppy husk without any permit or licence?”

Here from the statements made by ASI Naranjan Singh since promoted as Inspector appeared as PW-1 and PW-3 SI Surinder Singh it stands duly proved that on 06.12.2006 at about 5.15 p.m. in the area of village Bhullarn, accused – Kashmir Singh @ Sheera was found in conscious possession of 25 kg. of poppy husk without any permit or licence. Although both the PWs were cross-examined but they could not shattered on any material point. No reason has been suggested or proved, prompted by which witnesses might have come forward to depose against the accused and in favour of the prosecution to secure conviction of the accused. From the statement of PW-5 HC Surinder Pal and PW-2 ASI Amarjit Singh who were working as MHC at relevant time it comes out that no tampering with the seals had taken place during the period the case property remains in possession of such persons. It further comes out from affidavit of PW-5 HC Surinder Pal that the sample parcels had

reached office of Chemical Examiner with seals intact, report therefrom Ex.PY goes to show that on being checked / analyzed the sample was found to be of poppy husk. It further transpires that all the necessary formalities had been transformed as per rules and regulations while effecting the recovery from the accused. The accused could not furnish any reasonable or plausible explanation for his alleged false implication in this case. Therefore, Judge Special Court, Jalandhar was justified in convicting the accused for offence under Section 15 of the NDPS Act and the judgment to that effect is upheld now coming to the sentence part, he has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹10,000/- in default of payment of fine to further undergo rigorous imprisonment for a period of three months. As per the custody certificate furnished by the State counsel, he has undergone more than 4 months and 6 days of total sentence as on 01.06.2017 which means as on date around 08 months. As per custody certificate no previous conviction against the petitioner is alleged or proved. He is stated to be married person having two minor children and sole bread winner of his family which include his wife, two minor children and aged mother. Therefore, keeping in view all these factors, in my considered view ends of justice shall be adequately met if he is sentenced to imprisonment already undergone by him in this case. Therefore, the impugned judgment is upheld as far as the conviction part is concerned whereas remaining sentence part, the same is modified and he is sentenced to imprisonment already undergone by him in this case. However as regards payment of fine, the

same remain intact. Fine be deposited in the trial Court at the earliest otherwise recovery proceeding be initiated in that regard.

Petition stands disposed of accordingly.

Intimation be sent to the quarter concerned.

27.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**