

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

Crl. Appeal No.S-2794-SB of 2016 (O&M)

Date of Decision: November 09, 2017

Jaswinder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Legal Aid counsel
for the appellant.

Ms.Simranjeet Kaur, Asstt. Advocate General, 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 and order of sentence dated 04.07.2016 passed by learned Judge, Special Court, Ludhiana, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of four 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, Ludhiana, are as under:-

“2. Tersely put, the case of the prosecution is that on 07.06.2013 in the area of Village Janghpur, the accused was

found in conscious possession of 20 kgs. Poppy Husk without any licence or permit by the police party headed by SI Nidhan Singh and consisted of HC Jagjiwan Singh and other police officials nakabandi and checking. On receipt of report of Chemical Examiner, Kharar and after the completion of all other necessary formalities of the investigation, the accused was challaned for having been committed an offence punishable under Section 15/61/85 of the Act.”

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 SI Nidhan Singh, PW-2 Jagjiwan Singh, PW-3 Head Constable Ravinder Kumar and CW-4 Retd.SI Mukhtiar 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 in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above vide judgment of conviction and order of sentence dated 04.07.2016.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

Notice of motion was issued. Learned State counsel appeared and contested the appeal.

At the time of arguments, learned Legal Aid counsel for the

appellant brought it to the notice of this Court that Head Constable Pardeep Singh, to whom the specimen parcel was handed over for taking it to the FSL, has not been examined, therefore, link evidence is missing and there is nothing on the record to show that the samples were not tampered with when it remained in the custody of Head Constable Pardeep Singh.

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.

From the record, first of all, I find that the sample was handed over to Head Constable Pardeep Singh for delivering it to the FSL, which means that sample remained in the possession of Head Constable Pardeep Singh for some time but he has not been examined. As Head Constable Pardeep Singh has not been examined to complete link evidence, therefore, there is every chance that sample might have been tampered with. It is settled law that the prosecution is to prove its case beyond reasonable doubt but in the present case, as link evidence is missing, therefore, it cannot be held that prosecution has proved its case beyond reasonable doubt. Learned trial court has not discussed this aspect of the case regarding link evidence.

In view of the above discussion, I find that the judgment of conviction and order of sentence dated 04.07.2016 passed by learned Judge,

Special Court, Ludhiana, is not as per law and the same is set aside.

Appellant Jaswinder Singh is acquitted of the charged framed against him.

Therefore, finding merit in the present appeal, the same is allowed. Appellant Jaswinder Singh, who is in custody, be released forthwith, if his custody is not required in connection with any other case.

November 09, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No