

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

**Crl. Appeal No.S-210-SB of 2017 (O&M)
Date of Decision: March 02, 2017**

Thomas alias Sonu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ritesh Pandey, Advocate
for the appellant.

Mr.Deep Singh, 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 04.01.2017 passed by learned Judge, Special Court, Gurdaspur, 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 ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 21 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Gurdaspur, are as under:-

“2. Brief facts of the prosecution case are that on 6.3.2014, ASI Avtar Singh along with other police officials was going towards Villages Sohal, Dhariwal etc. in connection with patrol duty and in search of bad elements. When the police party reached near turn of village Kalyanpur, one clean

shaven man carrying one polythene bag in his right hand was seen coming on foot from the opposite side. On seeing the police party, he became perplexed and turned to his left hand side towards village Kayanpur. On suspicion, he was apprehended by Investigating Officer with the help of other officials. Thereafter Investigating Officer inquired about name and address of that person, who disclosed his name as Thomas alias Sonu son of Kashmir Masih, resident of Village Mullianwal, Police Station Sekhwan. ASI Avtar Singh disclosed his own identity to said person and asked him that he was suspicious of his carrying some contraband in his possession and that he wanted to search him. Investigating Officer also informed him that he had a legal right to get himself searched from him or from a Magistrate or Gazetted Officer, who could be called at the spot. Upon that, accused showed his intention to get the search conducted from a Gazetted Officer. Investigating officer prepared dissent memo of the accused. Thereupon, Investigating Officer informed DSPD Rajinder Singh Rathaur through wireless query, who reached at the spot after 30 minutes. He introduced himself to the accused. He also apprised the accused of his legal right to get himself searched from him or from a Magistrate or from some other Gazetted Officer. The accused reposed confidence upon him and asked him to take search of his own. DSP prepared consent memo of the accused. Before search of the accused, an effort was made to join an independent witness, but no body agreed for the same. Then on the directions of the DSP, Investigating Officer conducted search of the accused. Upon search of polythene bag already in the right hand of accused, intoxicant capsules make "PYRIVON SPAS" were recovered from the same. Out of recovered capsules, two samples of 10 capsules each were taken out and put into small plastic containers. Separate parcel of remaining 280 capsules was also prepared. Investigating Officer sealed above said parcels with his seal bearing impression 'AS'. DSP also sealed the same with his seal 'RS'. Sample seal chit was also prepared. Seal of Investigating Officer after use was handed over to HC Bakshish Singh. DSP retained his own seal. Above said case property was taken into police possession vide a separate recovery memo. Investigating Officer sent ruqa through HC Satnam Singh and on the basis of that, formal FIR was registered by ASI Kulwinder Singh. I.O prepared rough site plan with correct marginal notes. Accused was arrested in this case vide arrest and intimation memo. Personal search of accused was also conducted and Rs.500/- were recovered from his personal search. On return to the police Station, I.O handed over the case property as well as accused to SHO Bikramjit Singh who sealed the case property with his seal bearing impression 'BS' and kept the same intact in double lock under his custody. Form No. 29 was also prepared at the spot. Investigating Officer prepared entrustment memo

regarding the same. The memo was witnessed by HC Bakshish Singh and SHO also signed the same. On the next day, the accused and the case property were produced before the Illaqa/Duty Magistrate. During investigation, one sample parcel was sent to the office of FSL, Mohali and as per report of said laboratory, each capsule was containing 63.7 mg of 'Dextropropoxyphene Hydrochloride' and same was weighing 606 mg."

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 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Manjit Singh, Sampler Carrier, PW-2 Head Constable Bakshish Singh, recovery witness, PW-3 ASI Avtar Singh, Investigating Officer, PW-3-A DSP Rajinder Singh Rathaur, PW-4 Anshul Saini, NNMK, PW-5 retired Inspector Bikramjit Singh the then SHO and PW-6 PHC Harbhajan Chand.

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.

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 300 Capsules make 'PYRIVON SPAS' containing 181.8 grams of 'Dextropropoxyphene Hydrochloride' have been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 8 months and 17 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 04.01.2017 passed by learned Judge, Special Court, Gurdaspur, 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 poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of 8 months

appellant falls under non-commercial quantity i.e. 300 Capsules make 'PYRIVON SPAS' containing 181.8 grams of 'Dextropropoxyphene Hydrochloride', 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 Thomas @ Sonu, 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, if already not paid.

March 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No