

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

Crl. Appeal No.S-2964-SB of 2016 (O&M)
Date of Decision: March 02, 2017

Dhira Singh and another

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rohit Sharma, Advocate
for the appellants.

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Punjab, challenging the judgment of conviction and order of sentence dated 11.07.2016 passed by learned Judge, Special Court, Fazilka, whereby the appellants were held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one year each under Section 15(b) of the NDPS Act.

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

“The above name accused Dhira Singh and Satpal have been forwarded by Station House Officer, Police Station Arni Wala, to stand trial for having committed an offence punishable

under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 on the allegations that on 15.01.2014 ASI Harbans Lal along with Head Constable Krishan Lal and other police officials in connection with checking and patrolling duty were present in the Scorpio Car No.PB- 22-F-3799 at village Tahli Wala Bodla, Chahla, Chak Kheo and the police party was going from Kheo Wala towards Village Chak Dhab Wala and Bann Wala on the link road and when the police party reached at minor bridge at Village Chak Dhab Wala at a distance of two kilometer from village Kheo Wala, two young persons were seen coming on a motor cycle having placed a plastic bag in between them. However on seeing the police vehicle those persons i.e. accused became nervous and tried to turn their motor cycle towards the left side on the road adjoining the Khal, but the motor cycle got switched off on the turn. ASI Harbans Lal stopped the police vehicle and along with other police officials enquired into their name and addresses. Those persons i.e. the accused disclosed their name and address and the driver of motor cycle disclosed his name as Dhira Singh son of Tek Singh, whereas the pillion rider disclosed his name as Satpal son of Bhagwan Dass. In the meantime Gurmeet Singh son of Hakam Singh resident of village Chak Pakhi going towards village Chak Dhab Wala in connection with household work was coming and was joined with the police party. Thereafter ASI Harbans Lal disclosed his identity to the accused and expressed his intention to conduct the search of plastic bag suspecting some intoxicant material therein and also to conduct the search of motor cycle. The accused were also apprised about their legal right to get the search conducted in the presence of Gazetted Officer or Magistrate, but both the accused in one voice reposed faith upon ASI Harbans Lal for search of their plastic bag. Upon this Consent Memo was prepared which was thumb marked by Dhira Singh and signed by accused Satpal in the presence of witnesses. Thereafter the plastic bag was opening from the upper side and checked and it contained Poppy Husk. ASI Harbans Lal arranged weighing scale and has drawn one sample of 250 grams and one additional sample of 250 grams and the parcels thereof were prepared. The remaining Poppy Husk on being weighed came out to be 34 KG 500 Grams. The same was again put in the same plastic bag and bulk parcel thereof was prepared. All the three parcels i.e. two sample parcels and the bulk parcel were sealed by ASI Harbans Lal with his seal impression 'HL' and specimen seal impressions on Form M-29 were also prepared. The case property i.e. three parcels and the motor cycle were taken into police possession vide separate recovery memo attested by the witnesses. On the personal search of accused Dhira Singh currency notes of Rs.1500/- were recovered and on the personal search of accused Satpal currency notes of Rs.500/- were recovered. The personal search memo attested by the witnesses were also

prepared. The accused by possessing Poppy Husk without any permit or licence committed an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985. A ruqa was sent against the accused and ASI Harbans Lal completed the remaining investigation at the spot. On return the case property and the accused were produced before Inspector Darshan Singh Station House Officer, who after verifying the facts found the same to be correct and seals intact and also put his seal impressions 'DS' thereon. The case property was deposited in the Malkhana and the accused along with case property were produced in the Court on the next day and were remanded to judicial custody. The report under Section 57 of Narcotic Drugs and Psychotropic Substances Act, 1985 was sent. On 19.01.2014 the sample was sent for analysis to Chemical Examiner, Kharar through Constable Ravinder Pal Singh. After the completion of all the necessary formalities of investigation and receipt of Chemical Examination Report, the challan against the accused was presented in Court by Station House Officer, Police Station Arni Wala."

On presentation of challan against accused-appellants, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellants 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 Iqbal Singh, Registration Clerk, PW-2 ASI Harbans Lal, PW-3 Inspector Darshan Singh, PW-4 Head Constable Krishan Lal, PW-5 Sukhjinder Singh and PW-6 Constable Ravinderpal Singh.

At the close of prosecution evidence, the accused-appellants 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-appellants examined DW-1 Gurmeet Singh.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that 35 kgs. of poppy husk has been recovered from the accused-appellants, which falls under non-commercial quantity. He also contended that the appellants are suffering from criminal proceedings since 2014. He further contended that the appellants are only bread earners of the family. Learned counsel for the appellants next contended that appellants have already undergone about 10 months 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 appellants 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 11.07.216 passed by learned Judge, Special Court, Fazilka, 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 appellants are only bread earners of the family and are suffering from long protracted criminal proceedings since

2014 i.e. for the last about 3 years and further in view of the fact that appellants have already undergone actual sentence of about 10 months and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 35 kgs. of poppy husk, the sentence imposed upon the appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellants Dhira Singh and Satpal, who are in custody, be set at liberty forthwith, if their 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