

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

CRA-S No.2242-SB of 2017 (O&M)

Decided on: 09.08.2017

Dara

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Sukhpreet Kaur, Advocate
for the appellant.

Mr. Arun Kumar, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

The present appeal has been filed by the appellant against the judgment of conviction dated 08.05.2017 and order of sentence dated 11.05.2017 passed by the learned Additional Sessions Judge, Ambala vide which the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 03 months under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the Act').

Brief facts set up by the prosecution, as per the judgment passed by the learned Additional Sessions Judge, Amabla, are as under:-

“On 06.05.2016 ASI Kushal Pal (PW6) along with HC Manoj Kumar (PW1) and other police officials was present at Hari Palace Road near Papimal Godown where they noticed a person coming from the side of Hari Palace who on noticing them turned back and started walking

swiftly and threw away a polythene towards ganda nala, which was picked up by police party. On checking, it was found containing 38 pouches of smack weighing 5.16 gms. smack. The person told his name and address and also disclosed that the smack has been supplied to him b Swana. ASI Kushal Pal sent ruqa (Ex.P14) on the basis of which formal FIR (Ex.P15) was registered. During the investigation, accused – Swarna was arrested. After completion of necessary formalities of investigation, report under Section 173 Cr.P.C. was submitted against the accused for trial.”

Copies of challan were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

Thereafter, charge under Sections 20 and 29 of the Act was framed against the accused, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution in oral evidence examined PW1 HC Manoj Kumar, PW2 L/C Paramjit Kaur, PW3 C. Naresh Kumar, PW4 HC Sahab Singh, PW5 HC Gurdeep Singh, PW6 ASI Kushal Pal, PW7 Bhupinder Singh, PW8 SI Suresh Pal, PW9 ASI Vinod Kumar, PW10 ASI Subhash Chand and PW11 ASI Baljit Singh and tendered the documents Ex.P1 Recovery Memo, Ex.P2 Notice under Section 52 of the Act, Ex.P3 Consent, Ex.P4 Notice under Section 55 of the Act, Ex.P5 Endorsement, Ex.P6 Disclosure statement of Dara, Ex.P7 Demarcation Memo, Ex.P8 Notice under Section 52 of the Act, Ex.P10 Consent, Ex.P11 Disclosure statement of Swarna, Ex.P12 FIR, Ex.P13 Affidavit of Gurdeep, Ex.P14 Complaint, Ex.P15 FIR, Ex.P16 Endorsement, Ex.P17 Notice under Section 57 of the Act,

Ex.P19 Inventory, Exs.P20 to P22 Photographs, Ex.P23 Order, Ex.P24 FSL Report, Ex.P26 Affidavit of Baljit.

On the other hand, no witness was examined in defence.

The trial Court after appreciation of evidence, convicted and sentenced the accused/appellant as stated above whereas acquitted the co-accused – Swarna wife of Raj Kumar.

At the time of arguments, counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Counsel for the appellant contends that 5.16 gms. of heroine was recovered from the accused/appellant which falls under non-commercial quantity. The appellant is facing the trial since 2016. It is further submitted that the accused/appellant is the first offender and is the only bread-earner of the family. It has also been submitted that the accused/appellant has already undergone actual sentence of more than 06 months out of 01 year as per the custody certificate filed in the Court. Counsel for the appellant has placed reliance upon the judgment passed by this Court ***“Tarsem Singh vs State of Punjab”***, 2017(2) RCR (Criminal) 109 to contend that in an identical circumstances, the sentence of the accused who was found in possession of non-commercial quantity of smack was reduced to the period already undergone.

On the other hand, counsel for the State submits that the prosecution case has been duly proved from the statements of the prosecution witnesses and there is nothing on record to suggest that the appellant is falsely implicated in the present case. He also submits that the prosecution witnesses are consistent regarding the recovery from

the accused/appellant, therefore, learned counsel for the State prayed that the appeal should be dismissed.

I have heard counsel for the parties, perused the paperbook and the records of the Court below.

In view of the prosecution evidence, I find that it is proved beyond reasonable doubt that recovery of heroine from the appellant/accused is duly proved, therefore, the judgment of conviction dated 08.05.2017 passed by the learned Additional Sessions Judge, Ambala is correct as per the law and does not require any interference of this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that the appellant is the first offender, only bread-earner of the family and is facing the criminal proceedings since 2016 and also in view of the fact that he has already undergone the sentence of more than 06 months out of 01 year as on 09.08.2017 and also the fact that recovery of heroine from the appellant/accused falls under non-commercial quantity, the sentence imposed upon the appellant is reduced to the period already undergone by him.

However, the sentence of fine and in default of payment of fine stands affirmed. The amount of fine shall be deposited by the appellant, if not already paid, before the trial Court within a period of one month from the date of receipt of certified copy of this order, failing which, the appellant shall have to undergo the sentence as awarded in the default clause in respect of payment of fine.

Accordingly, the present appeal is partly allowed and the

order of sentence dated 11.05.2017, is modified to the extent discussed hereinabove.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No