

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

Crl. Appeal No.S-2422-SB of 2017 (O&M)

Date of Decision: September 26, 2017

Manoj Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravinder Rana, Advocate
for the appellant.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction 09.03.2017 and order of sentence dated 10.03.2017 passed by learned Special Judge, Ambala, 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 three months under Section 15 of the NDPS Act.

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

“2. According to prosecution case, on 03.06.2014, police party headed by ASI Raj Pal (PW7) and consisting of EASI Ram

Kumar (PW2) and other police officials of Police Station, Ambala Cantt. was present near Mama-Bhanja Peer near Air Force Station, Ambala Cantt. in connection with patrolling and crime checking, when secret information was received that Manoj Kumar son of Nirmal Singh (accused) is coming from the side of Indra Crossing, Ambala Cantt. on motorcycle No. UP-11AD-7748 unauthorizedly carrying bottles of liquor in his bag and if an immediate siege is laid, he (accused) can be apprehended red handed along unauthorized liquor. ASI Raj Pal constituted a raiding party and laid the siege. After some time, a young boy was seen coming on motorcycle No. UP-11AD-7748, who at sight of the police party tried to turn his motorcycle but ASI Raj Pal with the help of accompanying officials apprehended him on the basis of suspicion. On being inquired, he disclosed his name and address to be Manoj Kumar alias Chhota son of Nirmal Singh (accused). ASI Raj Pal asked the accused about contents of his bag carried and he disclosed that there is some Masala for the cattle. On checking of the bag, ASI Raj Pal found a polythene, which was found to contain poppy husk. Accused failed to produce any permit, licence or give any proper reply for keeping the poppy husk. On weighting, the recovered poppy husk was found to be 05 kilograms 800 grams. Two samples of 100 grams each were drawn and were converted into separate parcels, whereas the residue was put in the same plastic bag. Sample parcels as well as residue parcel were sealed with 3 seal impressions of 'RP' and after taking specimen impression of seal, the same was handed over to EASI Ram Kumar (PW2). The sealed parcels along-with the motorcycle and its documents were taken into possession vide seizure memo Ex.P3, which was witnessed by EASI Ram Kumar (PW2) and HC Raghbir Singh besides accused put his signatures beneath the same. ASI Rajpal also served notice under Section 52 of the NDPS Act Ex.P4 upon the accused and arrested him after conducting his personal search, regarding which search memo Ex.P5 was also prepared.

(ii) 'Tehrir' (writing) Ex.P11 prepared by ASI Raj Pal (PW7) was sent to the police station, at which formal FIR (copy Ex.P12) was recorded by SI Prem Chand (PW6). He made his endorsement Ex.P13 on the 'tehrir' and sent special reports to learned Area Magistrate and other higher police officers through Constable Narinder Singh (PW10). ASI Raj Pal also prepared rough site plan Ex.P15 of the place of recovery and produced the case property, accused and the witnesses before SHO/Inspector Malkeet Singh (PW9) along-with a notice under Section 55 of the NDPS Act Ex.P7 before him, who after verifying the facts and checking the case property put his one seal of 'SS' on each parcels and also made his endorsement Ex.P6 on notice Ex.P7. The case property was then deposited with the MHC.

(iii) Further prosecution case is that on the next day i.e. 04.06.2014, ASI Raj Pal (PW7) took back the case property from the MHC and produced the same before learned Area Magistrate vide writing under Section 52A of NDPS Act Ex.P16, besides inventory under Section 52A Ex.P17. Shri Hitesh Garg, the then learned Area Magistrate/JMIC, Ambala, checked the case property and as per directions of learned Magistrate, the IO got clicked photographs Ex.P1 and Ex.P2 from Constable Chhinder Singh (PW1) and then learned Magistrate passed order Ex.P18 and thereafter, ASI Raj Pal (PW7) deposited one sample parcel and sample seal with the MHC and remaining case property in the Judicial Malkhana.

iv) The sealed sample was sent to FSL, Madhuban on 05.06.2014. Notice under Section 57 of NDPS Act Ex.P9 was sent to DCP, who seen the same vide Ex.P10. Statements of various witnesses were recorded. Report of FSL was collected. After completing all other necessary formalities of investigation, challan was presented in the Court.”

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 Constable Chhinder Singh, PW-2 ASI Ram Kumar, PW-3 Constable Rajesh Kumar, PW-4 ASI Bir Bhan, PW-5 ASI Bhaiya Ram, PW-6 SI Prem Chand, PW-7 ASI Raj Pal, Investigating Officer, PW-8 Shri Anuj Kumar, PW-9 Inspector Malkeet Singh and PW-10 Constable Narinder 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.

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 poppy husk weighing 5 kgs. 800 grams has been recovered from the accused-appellant, which falls under non-commercial category. He also contended that the appellant is poor person, first offender, sole bread earner of the family and is suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 8 months 28 days of actual sentence including remission.

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 09.03.2017 passed by learned Special Judge, Ambala, 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 stated to be poor

person, first offender, sole bread earner of the family and 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 and 28 days including remission of 1 month and keeping in view the fact the recovery from the accused-appellant falls under non-commercial category i.e. 5 kgs. 800 grams poppy husk, 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 Manoj Kumar, 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.

September 26, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No