

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

Crl. Appeal No.S-3174-SB of 2016 (O&M)
Date of Decision: January 19, 2017

Gurjant Singh alias Janta

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Yash Pal Malik, 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 12.07.2016 passed by learned Judge, Special Court, Barnala, 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 ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 15(b) of the NDPS Act. However, co-accused Jagtar Singh was acquitted of the charge framed against him.

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

“2. The prosecution story in brief is that on 18.11.2013 ASI Jarnail Singh while posted at Police Station Sehna, was heading the police party and the said police party was going

from village Sehna towards village Ugoke through kachha path via village Jagjitpura for patrolling duty on official vehicle and when they reached near the cremation ground of village Jagjitpura, accused Gurjant Singh was seen coming from the side of village Ugoke while carrying a plastic bag on his head and on seeing the police party, he tried to turn back, but he was nabbed by ASI Jarnail Singh with the help of his police party on the basis of suspicion and on enquiry he disclosed his name as Gurjant Singh besides other particulars. ASI Jarnail Singh disclosed his identity and place of posting to Gurjant Singh and disclosed him that he suspected some intoxicant substance with him and his search is to be conducted, if he so desired, he can get his search conducted in the presence of some Gazetted officer or Magistrate, who can be called at the spot, but Gurjant Singh reposed confidence in ASI Jarnail Singh and the consent memo in this context Ex.PA was scribed by him, which was thumb marked by accused and attested by ASI Jaswinder Singh and C. Gurpreet Singh. ASI Jarnail Singh conducted search of plastic bag carried by accused, which led to recovery of poppy husk, out of which two samples of 250 grams each were separated and remaining on weighment came to 19 Kilograms and 500 grams and the samples and bulk were converted into parcels by ASI Jarnail Singh with his seal having impression JS and the specimen seal chit Ex.P.1 was prepared separately and the seal after use was handed over to ASI Jaswinder Singh and the entire case property was taken into possession vide recovery memo Ex.PB. The personal search of accused was conducted, which led to recovery of Rs.300/- from Gurjant Singh and memo to that effect was prepared as Ex.PC and the accused was arrested and information about his arrest was sent vide memo Ex.PD and all the memos were signed by above said witnesses. ASI Jarnail Singh sent ruqa Ex.PE to Police Station through C. Lakhwinder Singh on the basis of which, FIR Ex.PE/1 was registered by ASI Balwinder Singh. ASI Jarnail Singh prepared site plan of the place of recovery Ex.PF with correct marginal notes and he also prepared special report under Section 57 of NDPS Act Ex. PG at the spot and he recorded the statements of witnesses and on return to the Police Station, he produced the accused and case property before SI/SHO Bhupinder Singh, who verified the facts and after his satisfaction, he also sealed the parcel with seal mark BS and deposited the case property with MHC Jagtar Singh in intact position. On the next day, SI/SHO Bhupinder Singh prepared inventory report Ex.PH and handed over to ASI Jarnail Singh and he produced the same in the court of Magistrate alongwith accused, and case property, who seen the case property and passed order Ex. PH/1 and case property was accordingly deposited. During the investigation it came into light that the poppy husk recovered from the accused, was supplied to him by co-accused Jagtar Singh @ Tari and the accused Gurjant Singh further disclosed

that recovery of poppy husk could also be effected from Jagtar Singh @ Tari and statement of Gurjant Singh was also recorded under Section 27 of Evidence Act which was thumb marked by the accused and attested by C. Gurpreet Singh and PHG Kuldeep Ram and then Jagtar Singh @ Tari was also nominated as accused in this case and the raid was conducted at the disclosed place, but accused Jagtar Singh @ Tari could not be nabbed nor any further recovery could be effected. During the further investigation on 16.2.2014 Jagtar Singh @ Tari was arrested in this case. He was released on bail as per order of Hon'ble High court and a memo cum information about arrest was prepared as Ex.PJ and his personal search led to recovery of Rs.100/-, which was taken into possession vide memo Ex.PK. At the time of arrest of accused Jagtar Singh @ Tari, a motorcycle bearing no.PB-19H-0195, on which accused Jagtar Singh used to supply to accused Gurjant Singh, was also recovered alongwith its Registration Certificate Ex.P.2 vide recovery memo Ex. PK and an affidavit Ex.P.3 was also taken into possession, vide which aforesaid motorcycle was sold to Jagtar Singh by its registered owner. During the further investigation, owner of motorcycle was also verified vide application Ex.P.4 to DTO, Barnala and vide report Ex.P.5, it was reported that registered owner of said motorcycle is Ajaib Singh. After completion of investigation and receipt of report of Chemical Examiner Ex.PL, the challan has been prepared by Inspector Sarabjit Singh and presented in the court.”

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused was charge-sheeted under Sections 15 and 29 of the NDPS Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Jaswinder Singh, PW-2 MHC Jagtar Singh, PW-3 Constable Hardeep Singh, PW-4 Inspector Bhupinder Singh and PW-5 ASI Jarnail Singh.

At the close of prosecution evidence, the accused-appellant and co-accused 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 falsely implicated.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant and acquitted co-accused Jagtar Singh, 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 20 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is poor person, first offender and only bread earner of the family. He further contended that appellant has already undergone 8 months 1 day 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 12.07.2016 passed by learned

Judge, Special Court, Barnala, 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, first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about four years and further in view of the fact that appellant has already undergone actual sentence of 8 months 1 day and keeping in view the fact the recovery from the accused-appellants falls under non-commercial quantity i.e. 20 kgs. of 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 Gurjant Singh alias Janta, 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.

January 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No