

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-815-SB of 2012
Date of Decision : 30.01.2017

Amarjit Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None for the appellant.

Ms. Bhavna Gupta, DAG, Punjab.

Surinder Gupta, J.

This is appeal filed by appellant-Amarjit Singh challenging order dated 19.11.2011 passed by Judge, Special Court, Bathinda, confiscating truck bearing registration no. RJ-13-G-8003 as the same was being used for transporting the contraband.

2. A case bearing FIR No. 91 dated 22.08.2006 was registered at Police Station Dialpura for offences punishable under Sections 15 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). As per prosecution version, 13 gunny bags containing poppy-husk were recovered from the aforesaid truck and two persons, namely, Gurpreet Singh and Pali @ Pal Singh were arrested by police at the spot. The truck was admittedly owned by appellant-Amarjit Singh.

3. Learned trial Court convicted Gurpreet Singh and Pali @ Pal Singh for offences punishable under Section 15 NDPS Act and while giving the benefit of doubt, Amarjit Singh (appellant), owner of the truck in question, was acquitted for offence under Section 25 NDPS Act. Proceedings for confiscation of the truck were initiated under Sections 60 and 63 of the NDPS Act and Judge, Special Court vide order dated

19.11.2011 confiscated the truck in question and it was ordered to be auctioned.

4. In judgment dated 16.12.2008, passed by Judge, Special Court, Bathinda, it has been specifically observed that prosecution has successfully proved that contraband was being carried in the truck in question.

5. As per Section 60 NDPS Act, any conveyance used for carrying narcotic drug and psychotropic substance shall be liable for confiscation unless owner of the conveyance proves that it was used without his knowledge or connivance. The appellant, who was arrayed as accused by the prosecution, was acquitted by the trial Court. During proceedings under Sections 60 and 63 of the NDPS Act, he had taken the plea before trial Court that truck in question was purchased by raising loan from a finance company and he had employed Pali @ Pal Singh and Mohinder Singh as driver and co-driver respectively.

6. A moot question, which requires consideration before passing order under Sections 60 and 63 of the NDPS Act, was as to whether there was any substance in the plea of appellant that the truck was used without his knowledge and connivance. As per Section 63 of the NDPS Act, the Court before passing order was required to give hearing to the person against whom the order has been passed and to take evidence which he produced with respect to his claim.

7. In the judgment dated 16.12.2008, learned trial Court while acquitting the petitioner has observed as follows:-

“14.This Court finds that prosecution could not establish the offence against accused Amarjit Singh beyond any shadow of doubt. The gravamen of the

offence under Section 25 of the Act is that the owner of the vehicle must knowingly permit it to be used for the commission of offence by any other person, which is punishable under the Act. The crux of the offence under Section 25 of the Act rests with knowingly permitting use of the vehicle. There must be mens rea of the owner of the vehicle. Knowingly permitting goes further and requires further proof that the person permitting use of vehicle was aware of the fact that it was intended to be used for commission of an offence under the Act. There must be mens rea on the part of owner of the vehicle before this offence can be stated to be proved against him. Before a person can be held guilty under Section 25 of the Act, it has to be shown that he had knowingly permitted the vehicle to be used for the commission of offence by any other person. There must be guilty mind of the accused before this offence can be stated to have been proved against him. The accused can be found to be guilty of this offence only if he is proved to have guilty mind. Herein, no evidence has come on the record in the statements of PW-1 ASI Rajbir Singh, PW-4 Surinder Singh Walia, DSP or PW-5 SHO Sarabjit Singh, that the accused Amarjit Singh had mens rea in this case. There is no evidence on the record that accused Amarjit Singh knowingly permitted the use of the truck in question for carrying contraband by the

accused. The simple fact that he is owner of the vehicle and has been arrested in this case would not prove his guilty mind in this case.”

8. On perusal of order dated 19.11.2011, I find that no finding has been recorded by the Judge, Special Court, Bathinda that there was no substance in the plea of appellant that the truck was being used without his consent and connivance. Even no opportunity was allowed to him to prove this fact.

9. Keeping in view above facts, I set aside impugned order dated 19.11.2011 passed by Judge, Special Court, Bathinda and matter is remanded to take up the proceedings initiated under Sections 60 and 63 of the NDPS Act afresh and decide the same in accordance with law.

January 30, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No