

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

Crl. Appeal No.S-3330-SB of 2016 (O&M)

Date of Decision: April 20, 2017

Ishwar Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Choudhary, Advocate
for the appellant.

Mr.Parveen Kumar Aggarwal, Deputy 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 dated 05.09.2016 and order of sentence dated 07.09.2016 passed by learned Addl. Sessions Judge-cum-Special Judge, Fatehabad, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three 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 20 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge-cum-Special Judge, Fatehabad, are as under:-

“2. Brief facts of the prosecution case are that on 10.12.2014, ASI Jagmel Singh, Investigating Officer along with HC Gurminder and other police officials was present at Narwana T-point, Tohana, when a secret information was received that Ishwar son of Satbir is indulging in selling Sulfa and he is coming on his motorcycle TVS sports for selling Sulfa from the side of village Samain and if a raid is conducted, he can be caught red handed. Thereafter, a raiding party was constituted and it reached at the place of secret information. After some time, a young boy on a motorcycle was seen coming from the side of village Samain. On seeing the police party, he tried to turn back the motorcycle but he was apprehended. On enquiry, he disclosed his name as Ishwar son of Satbir, resident of Bhimewala. Investigating Officer served a notice under Section 50 of the NDPS Act upon him to the effect that he has some narcotic in his possession and the search can be conducted in the presence of Gazetted Officer and Magistrate or he can be produced before them. The notice was thumb marked by the accused and attested by HC Gurminder and Constable Satnam. In reply, the accused reposed full faith on the police party and Investigating Officer can take search. The reply was also thumb marked by the accused and attested by HC Gurminder and Constable Satnam. Thereafter, Investigating Officer conducted search and on search, sulfa was found from the pocket of his coat. Two samples of 20 grams each from the recovered sulfa were separated and on weighment residue was found to be 210 grams. The samples as well as residue were converted into sealed parcels sealed with the seal of ‘JS’ and were taken into police possession vide recovery memo alongwith motorcycle which was attested by the abovesaid witnesses. The seal after use was handed over to HC Gurminder. Thereafter, Investigating Officer sent ruqqa to the police station through Constable Satnam for registration of the case. Investigating Officer arrested the accused vide arrest memo. He prepared rough site plan and report under Section 55 of NDPS Act. Investigating Officer recorded the statements of witnesses under Section 161 Cr.P.C. On return to the police station, Investigating Officer produced the accused, witnesses and the case property before SHO Rohtash who verified the facts from the accused and witnesses and affixed his seal 'RK' on all the parcels and made his endorsement on report under section 55 of the NDPS Act. SHO directed Investigating Officer to deposit the case property with the MHC and put the accused in police lock up. On the next day, i.e. 11.12.2014 on interrogation, the accused made his disclosure statement which was thumb marked by the accused and attested by HC Gurminder and Constable Satnam. On the next day, after taking out the case property from the MHC, Investigating Officer produced the accused and case property before learned Illaqa Magistrate along with an application for verifying the inventory under Section 52-A of NDPS Act with inventory form

and learned Illaqa Magistrate passed an order in this regard. Thereafter, Investigating Officer deposited the residue parcel with the Moharar Judicial Malkhana and one sample parcel was deposited with MHC. Investigating Officer recorded the statements of witnesses under Section 161 Cr.P.C. On completion of investigation, challan was filed against the accused persons in the court and ultimately received in this 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 20 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Inspector Rohtash Kumar, PW-2 Constable Jai Singh, PW-3 Inspector Pardeep Kumar, PW-4 ASI Om Parkash, PW-5 ASI Rajpal, PW-6 ASI Jagmel Singh Investigating Officer, PW-7 HC Guminder Singh and PW-8 Constable Amardeep.

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 250 grams sulfa (charas) has been recovered from the accused-

appellant, which falls under non-commercial quantity. He also contended that the appellant is poor person, only bread earner of the family and suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 7 months and 21 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 05.09.2016 passed by learned Addl. Sessions Judge-cum-Special Judge, Fatehabad, 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, only 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 7 months and 21 days including remission of 1 month and keeping in view the fact the recovery from the accused-appellant falls under non-commercial

quantity i.e. 250 grams sulfa (charas), 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. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, the present criminal appeal stands partly allowed.

Since, appellant Ishwar Singh, is on bail, his bail/surety bonds stand discharged.

April 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No