

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

Crl. Appeal No.S-3562-SB of 2016 (O&M)

Date of Decision: September 19, 2017

Jagraj Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, Advocate
for the appellant.

Ms.Simranjeet Kaur, 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 09.09.2016 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 three years and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 15(b) of the NDPS Act.

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 25.4.2013 police party headed by SI Pargat Singh was going from village Khudi

Kalan towards village Jodhpur through link road for patrolling duty on official vehicle and when they reached about 50 karams towards southern side, then accused Jagraj Singh was seen sitting in the bushes having in possession two plastic bags and on suspicion, he was nabbed by SI Pargat Singh with the help of police party and on enquiry he disclosed her name as Jagraj Singh besides other particulars and in the meantime, Akbar Khan son of Mehar Din also reached at the spot on foot from Khuddi side and he was joined in the police party. SI Pargat Singh disclosed his identity and place of posting to Jagraj 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 Jagraj Singh reposed confidence in SI Pargat Singh and consent memo in this context Ex.PA was scribed by him, signed by accused and attested by ASI Kulwant Singh and Akbar Khan private witness by putting his thumb impression. Then SI Pargat Singh conducted search of plastic bag carried by accused mouth of which was already open, one dibba plastic was lying in it, out of which poppy husk was recovered. The search of other bag carried by accused also led to recovery of poppy husk and 10 empty polythene bags were also recovered, which were lying near by. Poppy husk was taken out from both the plastic bags and put on the ground sheet after mixing the same, out of which two samples of 250 gram each were separated and converted into parcels and the remaining poppy husk was again put in the same plastic bags and on weighing, in first bag poppy husk came to 19 kg 500 gram and it was given serial no.1, whereas in the second bag, poppy husk on weightment came to 20 kg and it was given serial no.2. The empty Polythene bags and empty plastic dibba was put in first bag having serial no.1 and both the plastic bags were converted into bulk parcels and the samples and bulk parcels were sealed by SI Pargat Singh with his seal bearing impression PS and specimen seal chit Ex.P.1 was prepared separately and the seal after use was handed over to ASI Kulwant Singh. The entire case property was taken into possession vide recovery memo Ex.PB which was attested by above said PWs and the personal search of accused was conducted and Rs.150/- were recovered and memo to that effect was prepared as Ex.PC. The accused was arrested vide memo Ex.PD and information about his arrest was sent vide memo Ex.PD/1. SI Pargat Singh sent ruqa Ex.PE to Police Station through HC Santokh Singh on the basis of which, FIR Ex.PE/1 was registered by ASI Ajaib Singh. SI Pargat 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 on reaching the Police Station on which was sent to the DSP and the endorsement of DSP

concerned Ex.PG/1. SI Pargat Singh recorded the statements of witnesses and on return to the Police Station, he produced the accused and case property before Inspector./SHO Navdeep Singh who verified the facts and after his satisfaction, he also sealed the parcel with his seal mark NS and deposited the case property with MHC Ajinderjit Singh in intact position. Inspector./SHO Navdeep Singh prepared inventory report Ex.PW4/A and handed over to SI Pargat 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 and case property was accordingly deposited. After receipt of report of Chemical Examiner Ex.PX and after completion of investigation, the challan has been prepared and presented by SHO.”

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 MHC Atinderjit Singh, PW-2 ASI Kulwant Singh, recovery witness, PW-3 Constable Rajvir Singh, PW-4 Inspector Navdeep Singh and PW-5 SI Pargat Singh, Investigating Officer.

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.

In defence, accused-appellant examined DW-1 Head Constable Jagrup Singh and PW-2 Head Constable Rajiv Kumar.

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 20 kgs. has been recovered from the accused-appellant, which falls under non-commercial category. He also contended that the appellant is first offender, sole bread earner of the family and is suffering from criminal proceedings since 2013. Learned counsel for the appellant next contended that appellant has already undergone 1 year and 9 days 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 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 09.09.2016 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 stated to be first offender, sole bread earner of the family and suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and further in

view of the fact that appellant has already undergone actual sentence of 1

year and 9 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial category i.e. 20 kgs. 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 Jagraj Singh, 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 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No