

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

Crl. Appeal No.S-3735-SB of 2016 (O&M)

Date of Decision: March 22, 2017

Vikay alias Mithu

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinod K. Kaushal, Advocate
for the appellant.

Mr.K.S.Aulakh, 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 16.09.2016 passed by learned Judge, Special Court, Amritsar, 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 ₹30,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 22 of the NDPS Act.

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

“2. Brief facts of the prosecution version are that on 8.8.2014 S.I. Kashmir Singh alongwith other police officials was present

near Ghee Mandi, Police Station Kotwali on private motor cycles that it saw a clean shaven person coming from the side of Sultanwind and he tried to turn away on seeing the police party and was about to throw a polythene after taking it out from the pocket of his trouser. He was apprehended with the help of other police officials on the basis of suspicion and on asking accused disclosed his name as Vicky above mentioned. Before conducting search an independent witness from the public was tried to get joined in the police party by S.I. Kashmir Singh but nobody became ready. Polythene held by accused was checked out of which 200 grams intoxicating powder was recovered. 10 grams intoxicating powder was separated as sample by putting in a plastic box and bulk was put in a separate box and parcels of the same were prepared. Both the parcels were sealed with seal bearing impression 'KS'. Sample seal was prepared. Form M29 was also completed and seal after use was handed over to H.C. Harpreet Singh. Accused could not produce any document to keep the intoxicating powder in his possession. So ruqa was sent to the Police Station for registration of FIR against the accused. He was arrested. Accused alongwith entire case property was produced before SHO E-Division who sealed the parcels with his seal bearing impression 'SS' and thereafter the case property was produced before Ilaqa Magistrate alongwith accused and a sample of 10 grams was drawn by the learned Ilaqa Magistrate from the bulk by sealing the same with his seal bearing impression AS/AS. Sample parcel was sent to the office of Chemical Examiner and on receipt of report and on completion of investigation challan was presented against the accused in the Special Court under NDPS Act.”

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 22 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Kashmir Singh, Investigating Officer, PW-2 Head Constable Harpreet Singh, PW-3 Head Constable Avtar Singh and PW-4 Inspector Sarabjit 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 200 grams of intoxicating powder containing Dextropropoxyphene has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person, first offender and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 7 months 14 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 16.09.2016 passed by learned

Judge, Special Court, Amritsar, 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 a poor person, first offender, only bread earner of the family and is 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 14 days and that the recovery from the accused-appellant falls under non-commercial quantity i.e. 200 grams of intoxicating powder containing Dextropropoxyphene, 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, present criminal appeal stands partly allowed.

Since, appellant Vicky alias Mithu is on bail, his bail/surety bonds stand discharged.

March 22, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No