

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

Crl. Appeal No.S-3899-SB of 2016 (O&M)
Date of Decision: January 12, 2017

Simarjit Singh and another

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamal Narula, Advocate
for the appellants.

Mr.K.S.Aulakh, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against State of Punjab, challenging the judgment of conviction and order of sentence dated 15.10.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, whereby the appellants were 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 one month each under Section 15 of the NDPS Act.

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

that on 30.12.2013, ASI Malkeet Singh along-with HC Harwinder Singh, C Rajiv Godara and other police officials on official vehicle bearing RC No. PB-12G-9045 were present in connection with nakabandi on the bridge of canal minor situated on the link road leading from village Phullo Khera to Kuttian Wali in the area of village Phullo Khera. One motorcycle make Hero Honda Hunk driven by a person with one pillion rider came from the side of village Kuttian Wali and one plastic gatta was lying in between both of them. ASI Malkeet Singh signaled to stop the motorcycle and the driver of the motorcycle stopped motorcycle at some distance behind the nakka. Both motorcyclists were apprehended on the basis of suspicion. Person driving the motorcycle disclosed his name as Simarjit Singh son of Amar Singh and the pillion rider disclosed his name as Amaritpal Singh son of Swaran Singh.

3. ASI Malkeet Singh told both of them that he suspects some contraband in plastic gatta in their conscious possession and search of the same as well as their personal search is to be conducted and also apprised them about their legal right of search under the NDPS Act to get the search conducted in the presence of Magistrate or Gazetted officer, but they jointly reposed faith in the I.O. and opted to get the search conducted from him. Consent memo of both the accused was prepared by ASI Malkeet Singh in this regard which was signed by both the accused and attested by HC Harwinder Singh and C Rajiv Godara.

4. On search of the plastic gatta, poppy husk was recovered out of which 250 gram poppy husk was separated to serve as sample and converted into a parcel. The remaining poppy husk which on weighment came out to be 19 kg 750 gram which was also converted into a parcel. ASI Malkeet Singh sealed both the parcels with his seal bearing impressions MS. Specimen seal was prepared on Form M-29 which was filled at the spot. The seal after use was handed over to HC Harwinder Singh. The case property along-with motorcycle bearing RC No. PB-05P- 8311 was taken into police possession vide memo.

5. Both the accused failed to produce any permit or license for keeping the poppy husk, so, ASI Malkeet Singh wrote ruqa and sent the same to the police station through PHG Jeet Singh on the basis of which FIR was registered by ASI Tarlok Chand. ASI Malkeet Singh prepared rough site plan. Both the accused were arrested and memos of grounds of arrest were also prepared. 6. On return to the police station, I.O. produced both the aforesaid accused along-with the sample parcel, bulk parcel, sample seal, CFSL form and motorcycle etc. before ASI Tarlok Chand, who was the officiating SHO, who verified the facts of the case and thereafter by keeping his seal intact, he affixed his seal bearing impression TC on sample parcel and

bulk parcel and also made the seal impression on sample seal chit and took the same into his possession along-with the articles of personal search etc. After the completion of investigation and receipt of report of Chemical Examiner, challan against the accused was presented in the Court.”

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

In support of its case, prosecution examined PW-1 ASI Tarlok Chand, PW-2 Constable Judgebir Singh, PW-3 Head Constable Surjit Singh, PW-4 Sukhchain Singh, PW-5 Sushil Raheja, PW-6 Mulakh Raj, PW-7 ASI Malkeet Singh, Investigating Officer and PW-8 Head Constable Harwinder Singh

At the close of prosecution evidence, the accused-appellants 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-appellants as stated above.

At the time of arguments, learned counsel for the appellants did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellants. Learned counsel for the appellants contended that 20 kgs. of poppy husk has been recovered from the accused-appellants, which falls under non-commercial quantity. The appellants are suffering

from criminal proceedings since 2013. He further contended that the appellants are poor persons and first offenders. He further contended that appellants have already undergone 4 months 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 15.10.2016 passed by learned Judge, Special Court, Sri Muktsar Sahib, 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 appellants are poor persons, first offenders and are suffering from long protracted criminal proceedings since 2013 i.e. for the last three years and further in view of the fact that appellants have already undergone actual sentence of 3 months 29 days 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 appellants is reduced to the sentence already undergone by them. However, the sentence of fine and in default thereof, shall remain

the same.

Accordingly, present criminal appeal stands partly allowed.

Appellants Simarjit Singh and Amritpal Singh, who are in custody, be set at liberty forthwith, if their custody is not required in connection with any other case, subject to payment of fine, if already not paid.

January 12, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No