

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

Crl. Appeal No.S-384-SB of 2017 (O&M)
Date of Decision: March 15, 2017

Bhola Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jashandeep Singh Sandhu, Advocate
for the appellant.

Mr.Deep Singh, 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 05.12.2016 passed by learned Judge, Special Court, Bathinda, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to undergo imprisonment for a period of two months 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, Bathinda, are as under:-

“2. Briefly stated the facts of the FIR are that on 10.6.2010 ASI Sadhu Singh along with other police officials on government vehicle bearing No. PB-12G-9071 was present at Mansa GT Road Maur Ghuman Kalan, in connection with Nakabandi.

There Sukha Singh son of Kala Singh, r/o Ghuman Kalan met the police party and ASI Sadhu Singh was talking with him. In the mean time accused was seen coming from the side of Maur Mandi on Bajaj Chetak Scooter No. PB-10AE-3550. He signaled to stop the scooter. The driver of the scooter applied brakes and scooter slipped and fell down Due to fall the plastic bag which was kept near the feet of the driver also fell down. The plastic bag got torned by fall and some poppy husk scattered on the ground. ASI Sadhu Singh apprehended the said person with the help of other police companions. On asking, the accused disclosed his name as Bhola Singh son of Maghar Singh r/o Ghuman Kalan. 100 grams poppy husk was taken out as sample and converted into a parcel. The remaining on weighing came to be 14 Kgs 900 grams, which was also converted into a parcel. Both the parcels were sealed by ASI Sadhu Singh with his seal bearing impression “ SS”. Sample seal was separately prepared and seal after used was handed over to HC Darshan Singh. Both the parcels were taken into possession vide separate memo, attested by the witnesses. From personal search of the accused, the currency notes of Rs.30/- were recovered, which were taken into police possession vide separate memo. RC, affidavit regarding purchase of scooter and scooter No. PB-10AE-3550 were taken into police possession vide separate memo. Ruqa was sent to the police station through PHG Pawan Kumar on the basis of which FIR under Section 15 of NDPS Act was registered against the accused. Site plan of place of recovery was prepared. Accused was arrested. Statements of the witnesses were recorded. On return to police station, ASI Sadhu Singh produced accused along with case property before SI Ravinder Singh, SHO. On 11.6.2010 accused along with case property was produced before the Illaqa Magistrate. On 16.6.2010 sample parcel to the chemical examiner, Kharar was sent and report of chemical examiner was obtained. After completion of the investigation, the challan against the accused was presented in the Court, where the copies of relevant documents were supplied to the accused, as provided under Section 207 of Code of Criminal Procedure.”

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 Sections 15 and 25 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 HC Kewal

Singh, PW2 Sadhu Singh, Investigating Officer, PW3 HC Darshan Singh, PW4 Balraj Singh, PW5 Janta Singh, PW6 Shashi Bhushan, Senior Assistant, DTO Office, Ludhiana, PW7 Inspector Satish Kumar, SHO.

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 15 kgs. of poppy husk 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 2010. He further contended that the appellant is poor person and only bread earner of the family. Learned counsel for the appellant next contended that appellant is in custody since the decision of the case i.e. from 05.12.2016.

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.

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 05.12.2016 passed by learned Judge, Special Court, Bathinda, 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 poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2010 i.e. for the last about 7 years and further in view of the fact that appellant is undergoing sentence since 05.12.2016 i.e. for the last more than 4 months and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 15 kgs. of 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 Bhola 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.

March 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No