

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

Crl. Appeal No.S-4260-SB of 2017 (O&M)

Date of Decision: December 15, 2017

Arun Kumar alias Shanky

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arshdeep Singh Brar, Advocate
for the appellant.

Mr.Rana Harjasdeep 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 21.11.2017 passed by learned Judge, Special Court, Moga, whereby the appellant along with co-accused was 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 six 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, Moga, are as under:-

“The above said accused have been forwarded by SHO, Police Station, Nihal Singh Wala to face trial under Section 15 of

NDPS Act on the allegations that on 24.11.2015,when ASI Gurtej Singh along with other police personnel was on petrol duty and was going from Nihal Singh Wala to Ransi Khurd on a private vehicle and when at about 3.30 p.m, they were about to reach the chorasta of Village Ransi Khurad, a motorcycle bearing no.PB25E-7145 was seen coming on which two persons were sitting State Versus Arun Kumar 2 and a plastic bag was kept by them in between them. They were apprehended on the basis of suspicion and inquired about their names and addresses. The person, who was driving the motorcycle, disclosed his name as Arun Kumar alias Shankey while the pillion rider disclosed his name as Prabhdial Singh. Then the IO introduced himself with the accused. He also told the accused that he had suspected some intoxicant material in the bag carried by them and its search is to be conducted. He also apprised the accused about their legal right to get conducted the search of their bag in the presence of some Gazetted Officer or a Magistrate but both the accused reposed confidence in ASP Gurtej Singh. When the gatta plastic carried by the accused was searched as per law, it was found to contain 15 kgs of poppy husk. After separating a sample weighing 250 grams the sample as well as the bulk were made into parcels and were taken into police possession. The accused were arrested and after conclusion of investigations, a challan against them was presented in the Court on 19.04.2016.”

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

In support of its case, prosecution examined PW-1 Harjinder Kaur, PW-2 ASI Balwinder Singh, PW-3 ASI Gurtej Singh, Investigating Officer, PW-4 Nirbhai Singh, Photographer, PW-5 Head Constable Balbir Singh, PW-6 Constable Harjit Singh, PW-7 Usha Rani and PW-8 Inspector Sukhdev Singh.

At the close of prosecution evidence, the accused-appellant and co-accused 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 their 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 along with co-accused 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 15 kgs. has been recovered from the accused-appellant, which falls under non-commercial category. He also contended that the appellant is sole bread earner of the family and suffering from criminal proceedings since 2015. Learned counsel for the appellant next contended that appellant has already undergone 1 year 5 months and 17 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 21.11.2017 passed by learned Judge, Special Court, Moga, 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 sole bread earner of the family and suffering from criminal proceedings since 2015 i.e. for the last about 2 years and further in view of the fact that appellant has already undergone actual sentence of 1 year 5 months and 17 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial category i.e. 15 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 Arun Kumar alias Shanky, 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.

December 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No