

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

Crl. Appeal No.S-512-SB of 2017 (O&M)
Date of Decision: April 25, 2017

Lakhwinder Singh @ Lakha

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.F.S.Virk, 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 16.01.2017 passed by learned Judge, Special Court, Patiala, 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 ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one year 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, Patiala, are as under:-

“2. As per prosecution story, on 03.12.2014 a police patrolling party consisting of ASI Paramjit Singh PW3, HC Rajinder Singh PW5 and other police officials was proceeding towards village Rasoli side and when they reached near cremation ground of Shutrana, the accused was spotted coming from village Rasoli side on foot. On seeing the police party, the accused turned towards his right hand side and tried to hide himself behind the boundary wall of cremation ground. On

suspicion, he was apprehended and his name and particulars were ascertained.

3. ASI Paramjit Singh PW3 introduced himself to the accused and apprised him about requirement of his search due to suspicion and the accused was also apprised of his legal right to opt for his search before gazetted officer or Magistrate. The accused reposed faith in ASI Paramjit Singh PW3 for his search. In this respect, consent memo Ex.PC was prepared. ASI Paramjit Singh PW3 conducted search of accused and one polythene envelope containing intoxicant tablets was recovered from the inner pocket of pant worn by him. Two samples weighing 10 tablets each were separated and the remaining bulk of recovered tablets was counted to be 510. Both samples and remaining bulk of recovered intoxicant tablets were put into separate plastic containers and were converted into parcels. Seals were affixed upon these parcels. Sample seal chits including chit Ex.P1 were prepared separately. Seal after use was handed over to HC Rajinder Singh PW5. All the sealed parcels were taken into police possession vide memo Ex.PD. From the personal search of accused currency notes worth 100 were recovered vide memo Ex.PE. ₹ Ruqa Ex.PF was sent to police station and on its basis, a formal FIR Ex.PF/1 was recorded. The accused was formally arrested vide memo Ex.PG and intimation of his arrest was given to his mother on phone. Site plan of spot Ex.PH was also prepared. FSL form was also prepared.

4. On return to police station, ASI Paramjit Singh PW3 produced the accused along with case property, sample seal chit and other documents before SI Nasib Singh PW4, the then officiating SHO and apprised him about the recovery. After verifying the case property, the officer-in-charge affixed his seals over the case property parcels and deposited the same with MHC Surjan Singh PW1. ASI Paramjit Singh PW3 sent report under Section 57 of NDPS Act Ex.PJ to higher authorities.”

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 MHC Surjan

Singh, PW-2 Constable Jatinder Singh, PW-3 ASI Paramjit Singh, PW-4 SI

Nasib Singh and PW-5 Head Constable Rajinder 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. In defence, accused-appellant examined DW-1 Dr. Santosh Kumar, Drug Inspector, Patiala III, DW-2 Parshotam Lal, DW-3 Kashmir Kaur, DW-4 Om Parkash, DW-5 Head Constable Balbir Singh and DW-6 Sewa Singh.

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 530 intoxicant tablets containing Diphenoxylate Hydrochloride with total weight of 41.34 grams have 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. Learned counsel for the appellant next contended that appellant has already undergone 7 months and 3 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.

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 16.01.2017 passed by learned Judge, Special Court, Patiala, 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 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 3 days and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 530 intoxicant tablets containing Diphenoxylate Hydrochloride, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. The sentence of fine imposed upon the appellant is also reduced and he is directed to pay a fine of ₹10,000/- instead of ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 3 months instead of one year.

Accordingly, present criminal appeal stands partly allowed.

Appellant Lakhwinder Singh alias Lakha, 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.

April 25, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No