

305.

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

CRA-S-4691-SB-2014

Date of decision:11.11.2017.

PREM PAL

... Appellant

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Sahil Khunger, Advocate,
for the appellant-legal aid counsel.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

HARI PAL VERMA, J. *(Oral)*

Appellant-Prem Pal has filed the present appeal against the judgment of conviction and order of sentence dated 08.08.2014 passed by learned Special Court, Rupnagar, whereby he was convicted for the commission of offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, the NDPS Act) and was sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹15,000/-. In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for three months.

Briefly stated, an FIR No.71 dated 15.06.2013 under Section 15 of the NDPS Act was registered against the appellant at Police Station GRPS Sirhind with the allegation that on 15.06.2013,

when SI Harjit Singh along with HC Sugreev Chand and other police

officials were present on Southern side at Platform No.1 at Railway Station, Ropar in connection with checking of suspicious persons, at about 5.27 AM, a train No.4553 UP came and he asked the passengers of the train to join them for checking, but they showed their inability to join the police party. In the meanwhile, the accused after alighting from the train, was going towards exit of the Railway Station with a white bag on his head. Noticing that the police party is checking the passengers, he abruptly stopped and, therefore, on suspicion, SI Harjit Singh apprehended the accused with the help of other police officials. On enquiry, he disclosed his name as Prem Pal son of Naney, resident of Village Aaspura, PS Dela Peer, District Bareilly (UP). SI Harjit Singh disclosed his identity to the accused and told the accused that he (SI Harjit Singh) suspects some intoxicant in his bag, therefore, he wants to search the same. The accused was also made aware of his right to get the search effected before a Magistrate or gazetted officer, but the accused reposed his faith in SI Harjit Singh. Accordingly, SI Harjit Singh scribed the consent memo of the accused Ex.PW2/A, thumb marked by the accused and attested by the witnesses. On search, it was found that the bag contained poppy husk, out of which, he separated two samples of 250 grams each and prepared two sample parcels. The remaining poppy husk on weighment came out to be 29.500 kg. Thus, 30 kg of poppy husk was recovered from the possession of the appellant-accused from the bag, the accused was carrying with him.

After completion of investigation, challan was presented in the Court. The copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused free of costs. On finding a prima-facie case, the appellant-accused was charge-sheeted for commission of offence punishable under Section 15 of the NDPS Act, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 08.08.2014 convicted the appellant for commission of offence under Section 15 of the NDPS Act and vide separate order of even date, sentenced him for the period and fine, as indicated above.

It is in these circumstances, the appellant has approached this Court by way of present appeal.

At the outset, learned legal aid counsel for the appellant has not challenged conviction of the appellant and has confined his arguments qua the quantum of sentence only. He has contended that as against the awarded sentence of two years, the appellant-accused remained in custody of about 1 year and 8 months and there is no other case against him. He has further contended that the appellant has been suffering the agony of criminal proceedings since 15.06.2013 i.e. the date when the FIR in question was registered against him. The appellant is a first time offender and there is no other case against him under the NDPS Act. Thus, he has prayed that the sentence awarded to the appellant may be reduced to the period already undergone by him.

The appellant has completed a substantial period of sentence. In support of his contention, he has relied upon the judgment passed by Hon'ble Apex Court in **Rappai Versus State of Kerala-2015(2) DC (Narcotics) 389.**

On the other hand, learned State counsel has referred to the custody certificate (Annexure A-1) and states that as on 02.09.2014, the total custody of the appellant was 1 year, 2 months and 18 days and since the court below has found that the appellant was in conscious possession of 30 kg of poppy husk, no ground is made out to interfere in the well reasoned judgment passed by learned Special Court, Rupnagar.

I have heard learned counsel for the parties.

On perusal of the judgment passed by learned trial Court, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the appellant guilty for commission of offence under Section 15 of the NDPS Act. There is no illegality or perversity in the findings recorded by learned trial Court which may warrant any interference of this Court. Even otherwise, learned counsel for the appellant has not assailed the judgment of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the appellant is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned,

Hon'ble Apex Court in **Rappai's case (supra)** has reduced the sentence

of appellant from two years to one year for commission of offence under Section 20B(ii)(b) of the NDPS Act for the recovery of 1100 grams of 'Ganja'. The relevant observations of the said judgment read as under:

“ 3. When the matter initially came up for hearing before us on 27th March, 2015, we had issued notice limited to the question of quantum of sentence awarded to the appellant. We have accordingly heard learned counsel for the parties at some length on that limited question. The quantity of Ganja seized from the appellant was said to be weighing 1100 grams only, which does not qualify to be called commercial quantity. There is no statutory minimum sentence prescribed for the offence proved against the appellant who is a labourer by profession with no criminal antecedents. In the totality of these circumstances, we are inclined to reduce the sentence awarded to the appellant from imprisonment for a period of two years to one year only. We see no reason to interfere with the fine amount or the default sentence imposed by the courts below which shall stand affirmed.”

In the present case, admittedly, the appellant has already undergone imprisonment for 1 year and 8 months and no other case is pending/convicted against him under the NDPS Act. He has been facing the agony of criminal proceedings since 15.06.2013 i.e. the date when the FIR in question was registered against him. As per the search memo, 30 kg of poppy husk was recovered from the appellant, which otherwise falls under non-commercial category. Since there is no statutory minimum sentence prescribed for the offence proved against

the appellant and having recourse to the judgment passed by Hon'ble Apex Court in **Rappai's case (supra)**, this Court is inclined to modify the sentence awarded to the appellant from 2 years to the period already undergone by him.

Ordered accordingly.

However, this Court does not find any reason to interfere with the fine imposed by learned Special Court. Therefore, the default sentence imposed by the court below shall stand affirmed and the appellant shall deposit the fine of ₹15,000/- within two months. In case, he fails to deposit the fine within the aforesaid period, the present appeal shall deem to have been dismissed.

With aforesaid modification in the order of sentence, the present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

11.11.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No