

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

Crl. Appeal No.S-620-SB of 2017 (O&M)

Date of Decision: August 28, 2017

Sukhdev Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Sekhon, Advocate
for the appellant.

Mr.Gaurav Garg Dhuriwla, Sr.DAG, 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 dated 18.01.2017 and order of sentence dated 19.01.2017 passed by learned Judge, Special Court, Ferozepur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹10,000/- 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, Ferozepur, are as under:-

“2. Briefly put, the facts of the prosecution case are that on

15.11.2013, ASI Harnek Singh along with other police officials, was going on a private car and motorcycle in connection with patrolling duty, and checking of suspected persons. The police party was going from the side Village Sukhewala towards Talwandi Mange Khan, Kamalgarh etc. When the police party was going on the link road from Talwandi Jalle Khan towards Kamalgarh, then a person was seen coming on a scooter from the front direction. A signal was given for stopping the scooter. The said person became nervous and tried to turn towards left hand side on the pavement. On suspicion, he was nabbed. His whereabouts were enquired. He disclosed his name as Sukhdev Singh son of Kartar Singh. The Investigating Officer gave his introduction and told the accused that he suspected that he (accused) might be carrying some intoxicant substance and he wanted to conduct the search of the plastic bag lying in front of the scooter and of his person. The Investigating Officer made the accused aware qua his legal right for getting the search conducted from a Gazetted Officer or Magistrate. The accused reposed faith in him. The consent statement of the accused was recorded which was thumb marked by the accused. On carrying out of the search of the plastic bag, it was found to be containing poppy husk, out of which, two samples each of 250 gram were drawn. The remaining quantity was weighed, which came out to be 19 Kgs 500 grams which was converted into bulk parcel. The case property was sealed with the seal bearing impression HS. Form M-29 was prepared. The case was taken into possession vide separate recovery memo. As the accused failed to show any license or permit, ruqa was sent for lodging of the case. The arrest of the accused was effected. The statements of the witnesses were recorded. The site plan was prepared at the spot. On return to the police station, the accused along with the case property was produced before SHO Gurbachan Singh. On completion of the investigation, the challan was presented against the accused.”

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 15 and 60 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 Head

Constable Kumar Singh, PW2 ASI Harnek Singh, PW3 Hardev Singh, PW4

SI Davinder Parkash and PW5 ASI Gurbachan 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.

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 20 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is first offender, only bread earner of the family and suffering from criminal proceedings since 2013. Learned counsel for the appellant next contended that appellant has already undergone 4 months and 4 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 18.01.2017 passed by learned Judge, Special Court, Ferozepur, 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 first offender, only bread earner of the family and suffering from long protracted criminal proceedings since 2013 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 4 months and 4 days as on 20.04.2017 and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 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. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, the present criminal appeal stands partly allowed.

Since, appellant Sukhdev Singh, is on bail, his bail/surety bonds stand discharged.

August 28, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No