

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

Crl. Appeal No.S-662-SB of 2017 (O&M)

Date of Decision: April 20, 2017

Makhan Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Satnam Singh Gill, 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 02.02.2017 passed by learned Judge, Special Court, Barnala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 15(b) of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Barnala , are as under:-

“2 Brief facts of the case are that police party of ASI Pargat Singh was on patrolling duty and reached at the bridge of a

water course in the area of village Handiaya, then a clean shaven person was spotted coming on a motor cycle and he was carrying a plastic bag on the motor cycle. Signal was given to stop the motor cycle but the motor cycle driver tried to escape but he was apprehended. It was 3.00 pm that said person disclosed his name as Makhan Singh. ASI Pargat Singh gave his introduction to the accused and also gave option of search to the accused before Gazetted Officer or Magistrate as there is suspicion that accused is carrying some illegal substance on his motor cycle bearing registration no.PB-13-W-6323. Accused reposed confidence in ASI Pargat Singh and his consent memo was prepared. Then search of the plastic bag tied with the seat of the motor cycle was conducted and it was found containing poppy husk. Two samples of 250 grams each were separated and remaining was found 19kg 500 grams. Two sample parcels and one bulk parcel were prepared and all the parcels were sealed with the seal of PS and seal after use was handed over to HC Paramjit Singh. Accused could not produce any permit or licence and then ruqa was sent for the registration of the case and this case was registered.”

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

In support of its case, prosecution examined PW-1 Dinesh Kumar, Accountant, PW-2 SI Pargat Singh, Investigating Officer, PW-3 Head Constable Paramjit Singh, PW-4 Constable Gurpreet Singh, PW-5 Head Constable Jagroop Singh and PW-6 DSP Kuldeep 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 only bread earner of the family and suffering from criminal proceedings since 2014. Learned counsel for the appellant next contended that appellant has already undergone 3 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 02.02.2017 passed by learned Judge, Special Court, Barnala , 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 only bread earner of the family and 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 3 months and 17 days 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Makhan 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.

April 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No