

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

Crl. Appeal No.S-750-SB of 2017 (O&M)

Date of Decision: March 16, 2017

Rajeev Kumar

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Inderjeet Sharma, 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 03.12.2016 passed by learned Judge, Special Court, Gurdaspur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1,000/- and in default of payment of fine, to undergo imprisonment for a period of one month 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, Gurdaspur, are as under:-

“2. Briefly the facts of the prosecution case are that on 08.05.2013, ASI Gurmeet Singh along-with other police officials were on patrolling duty and were present near T Point

S.D. College, Gurdaspur. There, he received secret information that accused Rajeev Kumar son of Devi Sharan is habitual of selling intoxicant substances and today he is coming from village Babehali and he could be apprehended. Being information reliable, Naka was convened and during checking one person was seen coming from Babehali side and on seeing the police party, he tried to escape, who was apprehended. On enquiry, he disclosed his identity as Rajeev Kumar son of Devi Sharan. ASI Gurmit Singh told his rank and gave option to the accused that there is some suspicion that you are having some intoxicant contraband and you have a legal right to get you searched from him or from any Magistrate or any Gazetted officer of the police. Upon this, accused Rajeev Kumar told that he wants to get him searched from some Gazetted Officer of the police. He prepared the non consent memo and informed to Navjot Singh the then DSP City through wireless questy.

3. After 15 minutes, DSP came and he introduced himself to the accused as he is Gazetted officer of the police and wants to search him and he has legal right that he can get him searched from any Magistrate or any other Gazetted Officer. Upon this option, accused reposed faith in him and became ready to get him searched from DSP, upon which consent memo was prepared. At that time, police party tried to join the independent witness, but nobody was ready to join the police party. ASI Gurmeet Singh conducted personal search of accused Rajeev Kumar and he found one polythene envelope containing intoxicant powder from his right hand. He took out the two samples of 10/10 gm each and remaining was weighed and it came to 380 gms intoxicant powder "Dextropropoxyphene Hydrochloride". The same were kept in the same polythene bag and it was converted into one parcel. All the parcels were sealed by ASI Gurmeet Singh with his seal bearing impression "GS" and sealed the seal of DSP bearing impression "NS". Sample seal was separately prepared and after use, the sample seal was handed over to HC Sulkhan Singh, whereas seal of DSP was retained by him. All the parcels along-with samples seal were taken into police possession.

4. Accused Rajeev Kumar could not produce any license or permit for retaining said intoxicant contraband and hence, Ruqa was sent to Police Station for registration the case through PHC Jagtar Singh upon which the present FIR was registered. 5. During investigation, sample was sent to Chemical Examiner, Mohali. Accused Rajeev Kumar was arrested. Statements of witnesses were recorded. After receipt of the report of Chemical Examiner and after completion of necessary investigation, challan against the accused was presented before the Court."

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 PW1 PHC Sulakhan Singh, PW-2 PHC Baldev Singh, PW-3 PHC Sukhwinder Raj, PW-4 Ashwani Kumar, PW-5 ASI Gurmeet Singh, PW-6 Retired Inspector Jagdev Singh, PW-7 DSP Navjot 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 Simmi and DW-2 Trishna.

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 400 grams intoxicant powder containing 'Dextropropoxyphene Hydrochloride' has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is a young man and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already

undergone more than 7 months 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 03.12.2016 passed by learned Judge, Special Court, Gurdaspur, 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 young man, only bread earner of the family and is 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 more than 7 months and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 400 grams of intoxicant powder containing 'Dextropropoxyphene Hydrochloride', 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 Rajeev Kumar, 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.

March 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No