

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

Crl. Appeal No.S-813-SB of 2017 (O&M)

Date of Decision: May 03, 2017

Bittu Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Jasjeet S. Dhaliwal, Deputy 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 06.02.2017 passed by learned Judge, Special Court, Sangrur, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 1½ year and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two 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, Sangrur, are as under:-

“2. The material facts, as unfolded by the prosecution in the report under section 173 of Cr.P.C are that on 2.1.2015, SI Sampuran alongwith other police officials were going towards village Kanakwal Bhanguan from village Dharamrgarh via

village Jakhepal in a private car in connection with checking of bad elements. When the police party reached near the bridge of canal in the revenue limits of village Kanakwal Bhanguan then, from the side of village Jakhepal one person was seen coming on foot by carrying a plastic bag on his head. It was about 4.00 P.M. On suspicion, he was apprehended by the Investigation officer with the help of other police party and on inquiry, he disclosed his name as Bittu Singh son of Hardam Singh resurgent of village Chowas Jakhepal and other particulars. I.O disclosed his identity to the accused and told him that he has suspected some intoxicant substance in the plastic bag carried by the accused on his head and he wanted to conduct his search and search of his plastic bag carried by him. He also apprised the accused of his legal rights to get conduct search in the presence of Gazetted Officer or a Magistrate, who can be called at the spot, but accused reposed confidence in SI Sampuran Singh. Consent memo of the accused was recorded, put his thumb impression by the accused and attested by HC Amandeep Singh and ASI Beant Singh and conducted search of the plastic bag, which led to recovery of poppy husk. Two samples of 250 gms each were separated and separate parcels were prepared and residue poppy husk on weighment was found to be 19 kg 500 gm, which was also converted into a separate parcel. Both the sample parcels and bulk parcel were lac sealed by SI Sampuran Singh with his seal bearing impression 'SS'. Specimen of the seal was prepared separately. Seal after use was handed over to ASI Beant Singh. All the three parcels and specimen of the seal were taken into possession vide recovery memo attested by the witnesses. Accused was arrested. Personal search of the accused was conducted. Ruqa was prepared and sent to police station, which led to the registration of formal F.I.R against the accused. Investigating Officer also prepared rough site plan of the place of recovery. 3. On returning the police station, the accused, witnesses and case property were produced before Inspector/SHO Bikkar Singh, who verified the facts of the case, interrogated the accused and affixed his seal bearing impression "BS" on the parcels as well as on sample seal chit and attested it along with case property. On the directions of SHO, Investigating Officer deposited case property with MHC of the police station. On completion of ensuing investigation and on receipt of report of Chemical Examiner the challan was presented in the Court."

On presentation of challan against accused-appellant, copies of

challan and other documents were supplied to him under Section 207

under Section 15(b) of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Nirmal Singh, PW-2 ASI Beant Singh, PW-3 Inspector Bikkar Singh, PW-4 Constable Amandeep Singh and PW-5 SI Sampuran Singh, Investigating Officer.

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 poor person, only bread earner of the family and suffering from criminal proceedings since 2015. Learned counsel for the appellant next contended that appellant has already undergone 4 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 06.02.2017 passed by learned Judge, Special Court, Sangrur, 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 criminal proceedings since 2015 i.e. for the last about 2 years and further in view of the fact that appellant has already undergone actual sentence of 4 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 and he is directed to undergo rigorous imprisonment for a period of 5½ months instead of 1½ years. However, other sentence, sentence of fine and in default thereof shall remain the same.

With the above-said modification in the sentence, the present appeal stands party allowed.

May 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No