

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

Crl. Appeal No.S-5345-SB of 2015 (O&M)
Date of Decision: March 14, 2017

Tina Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Aggarwal, Advocate for
Mr.Rahul 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 19.11.2015 passed by learned Judge, Special Court, Patiala, 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 ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three weeks under Sections 21 of the NDPS Act.

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

“2. Briefly stated, the facts of the case are that on 09.08.2012, ASI Ajaib Singh, along with other police officials, while riding on private vehicles, in connection with checking of suspected persons, was present at the bridge of minor canal in the area

of village Droli. There Gulzar Singh son of Gian Singh met them. When ASI Ajaib Singh was engrossed in talks with the said Gulzar Singh, then from the side of Bhakhra canal, one clean shaved person was seen coming on a motor cycle bearing No. PB-48-C-6814, who on seeing the police party, tried to turn back. On the basis of suspicion, he was apprehended, who, on inquiry, disclosed his name as 'Tina Singh' and also disclosed his other particulars. After disclosing his identity, ASI Ajaib Singh told Tina Singh that he suspected him to be carrying some narcotic substance for which he intended to conduct his search as well as search of his motor cycle. ASI Ajaib Singh apprised Tina Singh of the right to get the search conducted in the presence of a Gazetted officer or a Magistrate, who could be called at the spot. However, Tina Singh reposed confidence in ASI Ajaib Singh, upon which, consent memo was separately recorded.

3. Then, ASI Ajaib Singh conducted search of the accused which led to recovery of smack from the right side pocket of the pants worn by the accused. Two samples of 1 gram each were separated and the residue smack came to the extent 48 grams. All the parcels were sealed with the seal bearing impression 'AS'. Then all the parcels along with sample seal and the motor cycle were taken into possession vide separate recovery memo. Ruqa was sent to the police station, on the basis of which FIR was registered against the accused. Various other proceedings were conducted at the spot.

4. On return to police station, accused and the case property were produced before SI/SHO Gurcharan Singh, who verified the factum of recovery and affixed his seal bearing impression 'GS' on the parcels and sample seal. Then, he deposited the case property with MHC. On 10.8.2012, accused and the recovered articles were produced before the learned Magistrate, and thereafter, the case property was deposited as per directions of the learned Magistrate. One sample was sent to the office of the Chemical Examiner and on receipt of the report of the Chemical Examiner, challan against the accused was presented. "

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

In support of its case, prosecution examined PW-1 Head

Constable Kulwant Singh, PW-2 Head Constable Resham Ram, PW-3 SI Gurcharan Singh, PW-4 Shri Teja Singh, Advocate, PW-5 Ms.Bhawna, Clerk, PW-6 Simranjit Kaur and PW-7 Retired ASI Ajaib 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 his innocence and false implication in the present case. In defence, accused-appellant examined DW-1 Head Constable Bhola.

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 50 grams of smack 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 2012. He further contended that the appellant is first offender, labourer and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 3 months 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.

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 19.11.2015 passed by learned Judge, Special Court, Patiala, 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 first offender, labourer, only bread earner of the family and is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 5 years and further in view of the fact that appellant has already undergone actual sentence of 3 months 4 days till 11.01.2016 and that the recovery from the accused-appellant falls under non-commercial quantity i.e. 50 grams of smack, 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, present criminal appeal stands partly allowed.

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

March 14, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No