

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

Crl. Appeal No.S-821-SB of 2014 (O&M)
Date of Decision: February 01, 2017

Balwinder Singh alias Khundari

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashutosh Hoshiarpuri, Advocate
for the appellant.

Mr.K.S.Aulakh, 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 dated 05.12.2013 and order of sentence dated 07.12.2013 passed by learned Special Judge, 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 ₹20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of five months under Section 15 of the NDPS Act.

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

“Brief facts of the prosecution case are that on 11.06.2010 ASI Brij Lal along with H.C. Tilak Raj and other police officials was going on an official vehicle towards village Oadian in

connection with patrol duty and checking of suspected persons. When the police party reached the turning of metalled road in the area of village Odian, the accused was seen coming on a Motorcycle while carrying a plastic bag on the petrol tank of the motorcycle and on seeing the police party he tried to turn back but no suspicion he was apprehended. ASI Brij Lal told the accused that he suspects some intoxicating material in the Plastic bag and his search was to be conducted. He also apprised the accused about his legal right to be searched in the presence of a Gazetted Officer of Magistrate; whereupon, the accused opted to be searched in the presence of a Gazetted Officer vide his non consent memo Ex.P3; whereupon, ASI Brij Lal sent wireless message to Sh.Karamjit Singh, Deputy Superintendent of Police Sub Division, Fazilka (in short DSP), who reached the spot after some time. He introduced himself to the accused and told the accused that he was having some intoxicating material in the bag and search of the bag was to be conducted. The DSP also apprised the accused about his legal right to be searched in his presence or in the presence of some other Gazetted Officer or Magistrate; whereupon, the accused reposed confidence in the DSP vide his consent memo Ex.P4. Then on the direction of the DSP, ASI Brij conducted search of the bag carried by the accused on his motorcycle and recovered Poppy husk. Out of the recovered Poppy Husk two samples of 250 grams each were separated and the residue poppy husk on weighment came to be 24.5 kilograms. Both the samples as well as residue poppy husk were separately packed and sealed with the seal bearing impressions "BL". The DSP also put his seal bearing impression 'KS' on the case property and then the entire case property was taken into possession including the motorcycle bearing Engine No. HA10EA89M10985 and Chassis No. MBLHA10EJ89M05490, vide recovery memo Ex.P6. CFSL form Ex.P5 was prepared at the spot. The accused could not produce any licence or permit for keeping the poppy husk in his possession. Ruqa Ex.P10 was sent to the police station, on the basis of which formal FIR Ex.P11 was registered against the accused. Accused was arrested in this case and grounds of arrest were intimated to him vide memo Ex.P8. Rough site plan Ex.P12 was prepared showing the place of recovery. On personal search of the accused current notes of Rs.200/- were recovered which were taken into possession vide memo Ex.P7. On return to the police station ASI Brij Lal produced the accused as well as the case property before sh.Baljit Singh, SHO, who verified the investigation, interrogated the accused and kept the case property in his possession vide memo Ex.P13. On the next day he produced the accused and the case property before the learned Illaqa Magistrate. On 16.6.2010, Sh.Baljit Singh, SHO sent the sample parcel to the Chemical Examiner for analysis through H.C Ram Parkash. On receipt of the report of Chemical Examiner Ex.P11 and after conclusion of

investigation and other necessary formalities challan in hand was submitted for commencement of trial 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 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Balwinder Singh, PW-2 ASI Brij Lal, Investigating Officer, PW-3 Head Constable Ram Parkash, PW-4 SHO Baljit Singh, PW-5 DSP Karamjit Singh and PW-6 ASI Tilak Raj (then H.C.).

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 falsely implicated.

In defence, accused-appellant examined DW-1 Head Constable Prem Singh and DW-2 Mahesh Kumar.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants 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 appellants. Learned counsel for the appellant contended that 25 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2010. He further contended that the appellant is

poor person and only bread earner of the family. He further contended that appellant has already undergone 4 months 16 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.

After hearing learned counsel for the appellant as well as learned State counsel, I find that it is settled law the testimony of police official is as good as of any other witness unless some enmity or motive of the police official to falsely implicate the accused is alleged and proved. In the present case, no such enmity or motive of the police officials is alleged and proved on the record. There is no ground to disbelieve the statements of the police officials. The PWs have deposed consistently regarding the prosecution version. There are no material contradictions or material improvements in the statements of the witnesses. No material discrepancies have been pointed by learned counsel for the appellants. There is nothing in the cross-examinations of the PWs which may make their statements unreliable. All the mandatory provisions of the NDPS Act have been complied with. Link evidence is complete.

In view of the above, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 05.12.2013 passed by learned Judge, Special Court, Sri Muktsar Sahib, 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 poor persons, only bread earner of the family and is suffering from long protracted criminal proceedings since 2010 i.e. for the last about seven years and further in view of the fact that appellant has already undergone actual sentence of 4 months 16 days and keeping in view the fact that the recovery from the accused-appellant falls under non-commercial quantity i.e. 25 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 Balwinder Singh alias Khundari, 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.

As regarding CRM No.24152 of 2016, the same is allowed. The sentences awarded to the appellant in case FIR No.117 dated 11.06.2015 and case FIR No.130 dated 19.07.2011, registered at Police Station Fazilka, are ordered to run concurrently.

February 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No