

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1687-SB-2018 (O&M)
Date of decision: 01.06.2018

Mohinder Singh

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Randhawa, Advocate
for the appellant.

Ms. Samina Dhir, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this appeal is to the judgment of conviction dated 15.11.2017, vide which the appellant was held guilty of offence punishable under Section 18(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and order of sentence of even date, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 02 years with a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

Brief facts of the case are that FIR No.35 dated 31.01.2013 under Section 18 of the NDPS Act, was registered at Police Station Focal Point, Ludhiana with the allegations that on 31.01.2013, Inspector Gurtej Singh, Investigating Officer along with co-officials, was present near a factory on Focal Point, Ludhiana, on patrol duty. The police party saw one Sikh person

driving scooter No.PB-10-AD-7856, on which a lady was pillion rider. On seeing police party, the scooterist became perplexed and tried to turn back the scooter, but engine of the scooter stopped and on suspicion, the police party apprehended them. The scooter driver disclosed his name as Mohinder Singh (appellant) and the pillion rider disclosed her name as Daljit Kaur @ Babli. Thereafter, the Investigating Officer by disclosing his identity, gave them notice under Section 50 of the NDPS Act, suspecting that some intoxicant substance is in their possession. A separate offer was given to both the accused persons that they have a right to be searched in presence of a Gazetted Officer or a Magistrate. The accused persons opted for their search, in presence of a Gazetted Officer. Thereafter, a lady Constable was called at the spot and information was sent to ACP (South), Ludhiana on wireless and dissent memo was prepared. Lady Constable Gurmeet Kaur reached at the spot and joined the police party and dissent memo of Daljit Kaur @ Babli was also prepared and was attested by the witnesses. Thereafter, Mukhtiar Singh, ACP reached at the spot in his official vehicle and after giving his introduction, the offer of search was given to the accused persons and when they reposed confidence in him, then separate consent memos were prepared and search of appellant Mohinder Singh was conducted, in which 01 kg opium was found and two samples weighing 10 gram were separated and the sample parcel and remainder were put in a plastic container and were sealed with seal impression 'GS' and 'MS'. The case property along with the scooter was taken in the possession vide recovery memo. Thereafter, search of accused Daljit Kaur was conducted by lady Constable Gurmeet Kaur and 02 kg opium was found from her in a polythene paper and by taking two samples of 10 gram each, the remaining was

put in plastic container and the sample parcels and remainder were also sealed with seal impression 'GS' and 'MS'. Since the accused persons could not produce any valid permit for keeping the opium, an information by way of a ruqa was sent to the police station for registration of formal FIR, through HC Raghbir Singh. Thereafter, on completion of the investigation at spot and preparing personal search memo, arrest memo of the accused persons, they were brought to the police station and the case property was deposited in the malkhana. On the very next day, the accused persons along with case property were produced before the Illaqa Magistrate along with the inventory. The Illaqa Magistrate certified the inventory to be correct and had also drawn representative samples out of the bulk parcels of the opium recovered from the accused persons and thereafter, the case property was deposited in the judicial malkhana and sample parcels were deposited in the police malkhana. Later on, in the investigation, accused Mohinder Singh recorded his disclosure statement that he has purchased the scooter No.PB-10-AD-7856 from one Kasturi Lal, but the same was not transferred in his name. Thereafter, the sample parcels were sent to the Chemical Examiner on 22.02.2013 and the challan was presented.

The trial Court framed the charge under Section 22 of NDPS Act. The prosecution in its evidence examined PW1 Ravinder Singh, who tendered his affidavit regarding deposit of the case property with the judicial malkhana. PW2 ASI Tarsem Singh, a witness of the recovery, proved the documents Ex.PB to Ex.PL, which were the notice under Section 50 of NDPS Act, consent memos, non-consent memos, arrest memos and recovery memos. PW3 HC Rajinder Singh submitted his affidavit and deposed about handing over the sample parcels to the Chemical Examiner on 22.02.2013 and stated that the

seals were intact. PW4 Surinder Bhandari, an official of DTO, Ludhiana, proved the registration certificate of the scooter. PW5 Gurtej Singh, DSP/IO deposed on the lines of the investigation conducted by him and also proved the documents Ex.PB to Ex.PJ/1, Ex.PX, Ex.PY and apart from these documents, he produced the case property as MO1 to MO5. PW6 Mukhtiar Singh SP, the Gazetted Officer, who was called at the spot, proved the documents Ex.PD to Ex.PG and Ex.P1 to Ex.P3. Similarly, PW7 Sandeep Singh, retired SI, proved the documents Ex.PW7/A to Ex.PW7/I. Thereafter the statement of the accused persons under Section 313 Cr.P.C. was recorded and they denied all the incriminating evidence against them and pleaded their false implication. Appellant Mohinder Singh further stated that he does not know accused Daljit Kaur and he has no concern with the scooter No.PB-10-AD-7856. He further stated that he is a labourer and is working in a factory at Village Kanganwal and he was in the factory till 6.00 PM on that day and he was going back on his bicycle, when he was picked up by the police.

In defence, accused persons examined DW1 Dharamjit Singh, who proved the documents Ex.D1 and Ex.D2 and DW2 HC Harmesh Lal, who also proved the document Ex.D3 regarding location of police party at a distant place.

Thereafter, the trial Court vide judgment of conviction and order of sentence dated 15.11.2017 held both the accused persons guilty of offence punishable under Section 18(c) of NDPS Act. Appellant Mohinder Singh was sentenced R.I. for a period of two years with a fine of Rs.10,000/- and co-accused Daljit Kaur @ Babli was sentenced to undergo 04 years R.I. with a fine of Rs.20,000/-.

Learned counsel for the appellant, at the very outset, restricted his

arguments to the extent of sentence awarded by the trial Court i.e. 02 years R.I. and a fine of Rs.10,000/- and submits that the appellant is very poor person, who is living below the poverty line. It is further submitted that son of the appellant namely Shamsher Singh is 100% blind by birth and he is the only person to look after him, as his wife Telo Devi expired on 29.09.2011. Counsel for the appellant has placed on record photocopy of the disability certificate of son of the appellant Shamsher Singh, aged about 23 years, issued by the Civil Surgeon, Ludhiana, declaring that he is 100% blind. Counsel for the appellant has also placed on record death certificate of wife of the appellant Telo Devi. Both these documents are taken on record as Mark 'X' and Mark 'Y'.

Learned counsel for the appellant has submitted that the appellant is not a previous convict and he is earning his livelihood by working as a labourer in a factory and never possessed any scooter, as he is only having a cycle to go to his place of work. It is further submitted that as per the registration certificate of the scooter Ex.PW4/A, he is not owner of the scooter. Counsel for the appellant has further submitted that the appellant has undergone 08 months and 15 days of total sentence including remission out of two years R.I. awarded by the trial Court and is not involved in any other case. It is also submitted that the appellant was on bail from 02.04.2013 to 15.11.2017 and in the intervening period of four and a half years, he has not repeated any such offence and he is earning his livelihood by doing the labour work and has never misused the concession of bail during the trial.

Learned counsel for the appellant has relied upon judgment of this Court in **Tarsem Singh Vs. State of Punjab, 2017 (2) RCR (Crl.) 109**, wherein it has been held that where recovery is of non-commercial quantity, the

accused has undergone substance sentence; he is not a previous convict, he is not involved in any other case, sentence can be reduced to the period already undergone by the accused.

Learned State counsel has filed the custody certificate and as per this custody certificate, the appellant was on bail for a period of about four and a half years and he is not involved in any other case. It is submitted by learned State counsel that out of two years R.I. awarded by the trial Court, the appellant has undergone 08 months and 15 days of total sentence including undertrial period. Learned State counsel could not also dispute the factum of death of wife of the appellant and that his son is 100% blind and submitted that this plea was also taken before the trial Court at the time of passing of order of sentence.

After hearing learned counsel for the parties, I find no ground to interfere in the conviction of the appellant, as no argument is raised by counsel for the appellant, finding any fault with the trial Court judgment. However, I find merit in the contentions of the appellant that the sentence of two years R.I. awarded by the trial Court to appellant Mohinder Singh be reduced to 08 months and 15 days i.e. the sentence already undergone by him, for the following reasons: -

- (a) During the period of four and a half years from 02.04.2013 to 15.11.2017, when the appellant was on bail during the trial, he has not repeated any such offence and has shown improvement in his character.
- (b) The son of the appellant is 100% blind as per the medical certificate (Mark 'X') and his wife has already died in the year 2011 (Mark 'Y') and the blind son of the appellant is wholly dependent upon him.
- (c) The appellant is only bread earner in his family, as it has come in

the evidence that he was working as labourer in a private factory.

(d) The recovery from the appellant is of non-commercial quantity and he has undergone substance sentence of 08 months and 15 days.

(e) The appellant is not a previous convict.

In view of the judgment of this Court in **Tarsem Singh's** case (supra), this appeal is partly allowed. Impugned judgment of conviction dated 15.11.2017 is upheld and sentence of the appellant is reduced to the period already undergone by him and fine is also remitted. Appellant Mohinder Singh shall be released forthwith from judicial custody, if not required in any other case.

[ARVIND SINGH SANGWAN]
JUDGE

01.06.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No