

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

CRA-S-2532-SB-2018 (O&M).

Decided on:-July 30, 2018.

Kulwinder Kaur.

.....Appellant.

Versus

State of Punjab.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Parminder Singh Sekhon, Advocate
for the appellant.

Mr. Tanvir Joshi, AAG, Punjab
for the respondent-State.

HARI PAL VERMA, J.

The appellant has filed the present appeal against the judgment of conviction and order of sentence dated 31.05.2018 passed by learned Special Court, Sangrur, whereby the appellant was held guilty for commission of offence under Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) and was sentenced to undergo rigorous imprisonment for a period of four months and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for two months.

Briefly stated, FIR No.126 dated 19.09.2015 under Section 15 of the NDPS Act was registered against the appellant at Police Station City Dhuri with the allegations that on 19.09.2015, the police party headed by ASI Manjit Singh was going on a private car along with laptop and printer from City Dhuri to Ram Nagar Basti, Dhuri in connection with patrolling and

checking of suspected persons. When the police party reached at a distance of 50 yards ahead to turning point of Kaheru Road, it was noticed that a lady carrying a plastic bag on her head was coming from opposite side by foot. On seeing the police party, she got perplexed and tried to turn back. She was apprehended on the basis of suspicion and on enquiry, she disclosed her name as Kulwinder Kaur widow of late Dev Singh, resident of Bazigar Basti Dhuri, District Sangrur. The investigating Officer disclosed his identity and told that he has suspicion of having contraband in her plastic bag and apprised the accused of her legal right to be searched in the presence of a Gazetted Officer or a Magistrate. However, the accused reposed faith in the investigating officer to conduct the search. As such, her consent statement was recorded. Thereafter, on search of plastic bag carried by her, poppy husk was recovered, out of which two samples of poppy husk weighing 250 grams each were taken and converted into parcels. The remaining poppy husk along with the bag was weighed and it came to 19 Kgs 500 grams and was converted into a parcel. Thereafter, all the three parcels were sealed with the seal bearing impression 'MS'. Sample seal was prepared separately on form No.29. The seal after use was handed over to ASI Darshan Singh. All the three sealed parcels were taken into police possession vide a separate recovery memo.

The personal search of the accused was conducted by lady Constable Taranjit Kaur from which the currency notes of Rs.400/- were recovered. Personal search memo was also prepared. Ruqa was sent to the Police Station for registration of a case, on the basis of which the aforementioned FIR was registered.

Rough site plan of the place of recovery was prepared. The accused was arrested and statements of witnesses were recorded. A report under Section 57 of the NDPS Act was prepared. On return to the Police Station, the entire case property, accused and witnesses were produced before SHO/SI, who verified the facts of the case from the accused and put his counter seal bearing impression 'HS' on all the parcels. As per the instructions of SHO, the investigating officer had deposited the case property with MHC Sukhdev Singh and the accused was sent to lock up.

On 20.09.2015, the investigating officer took the case property from the MHC and produced the same along with the accused before the Sub Divisional Judicial Magistrate, Dhuri, who conducted proceedings under Section 52-A of NDPS Act. The sample parcel was sent to the office of FSL, Mohali through Constable Amritpal Singh and the report of Chemical Examiner was received.

After completion of investigation, Challan was presented before the Special Court. Copies of challan were supplied to the accused free of cost as envisaged under Section 207 Cr.PC. Finding a prima facie case against the accused, she was charge sheeted under Section 15(b) of the NDPS Act, to which she did not plead guilty and claimed trial.

In support of its case, the prosecution examined investigating officer ASI Manjit Singh as PW1, Constable Amritpal Singh as PW2, Inspector Harinder Singh as PW3, ASI Darshan Singh as PW4, lady Constable Taranjeet Kaur as PW5 and ASI Sukhdev Singh as PW6. Thereafter, the Additional Public Prosecutor closed the prosecution evidence.

Statement of accused under Section 313 Cr.P.C. was also recorded, wherein all the incriminating evidence was put to her, but she denied the allegations and pleaded that she is innocent and has falsely been implicated in the case. However, in defence, no evidence was produced by the accused.

Vide impugned judgment and order dated 31.05.2018, learned Special Court convicted the appellant-accused and sentenced her as mentioned hereinabove.

Aggrieved against the aforesaid judgment and order dated 31.05.2018 passed by learned Special Court, the appellant has filed the present appeal.

At the outset, learned counsel for the appellant has not challenged the conviction of the appellant and confined his submissions only for a lenient view regarding quantum of sentence. He has contended that as against the awarded sentence of four months, the appellant remained in custody as under-trial from 19.09.2015 till 28.10.2015 and thereafter, she is in custody since 31.05.2018 i.e. the date when the impugned judgment was passed by learned Special Court. As such, she has already undergone imprisonment for 3 months and 8 days.

Learned counsel for the appellant has further submitted that the appellant is a poor lady and first time offender. There is no other criminal case pending against her. She has been suffering the agony of criminal proceedings since 19.09.2015 i.e. the date of registration of the FIR in

question. Thus, he has prayed that the sentence of the appellant may be reduced to the period already undergone by her.

On the other hand, learned State counsel has not disputed the custody of the appellant, but has opposed the plea of taking a liberal view, as pleaded by learned counsel for the appellant. However, he states that there is no other case against the appellant.

I have heard learned counsel for the parties.

Perusal of the impugned judgment and order dated 31.05.2018 passed by learned Special Court, Sangrur reveals that the Court has rightly appreciated the evidence on record while holding the appellant guilty for commission of offence under Section 15(b) of the NDPS Act. As such, there is no illegality or perversity in the findings given by both the Special Court. Even otherwise, learned counsel for the appellant has not assailed the judgment of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the appellant is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, as against the awarded sentence of four months for having 20 Kgs of poppy husk, the appellant has undergone imprisonment for 3 months and 8 days. She is a first time offender and there is no other case pending against her. She has been facing the agony of criminal proceedings since 19.09.2015 i.e. the date when the FIR in question was registered against her. Therefore, taking into account the protracted trial, antecedents of the appellant coupled with the fact that she has already suffered incarceration for a period of 3 months and 8

days, this Court feels that the ends of justice would be met, if the sentence awarded to the appellant is reduced to the period already undergone by her.

Ordered accordingly.

However, there will be no change in the sentence of fine. On deposit of the amount of fine as imposed by learned Special Court, the appellant be released forthwith, if not required in any other case.

With aforesaid modification in the order of sentence, the present appeal stands dismissed.

July 30, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No