

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3448-SB-2015 (O&M)

Date of decision: 17.03.2018

Devinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Abhishek Sharma, Advocate (Legal Aid Counsel),
for the appellant.

Ms. Bhawna Gupta, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

The instant appeal has been filed assailing the judgment of conviction and order of sentence dated 16.02.2015 (hereinafter referred to as the impugned judgment'), passed by learned Judge, Special Court, Sangrur (for short, 'the trial Court'), thereby, convicting the appellant under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and sentencing him to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rupees one lakh with default stipulation.

Learned counsel contends that the independent witness, Gurjant Singh, though cited as witness, was not examined by the prosecution. The appellant is stated to be the driver of the vehicle used in the crime, owned

Kumar/Manish Sharma, PW-9. As per the statement of PW-9, the vehicle in question was borrowed by co-accused Jonny Singh on the pretext of purchasing medicines for the latter's wife. Thus, it is argued that the prosecution has not been able to prove any connection of the appellant with the vehicle in question and thus, the recovery was not effected from the conscious possession of the appellant. It is further contended that the contraband allegedly recovered falls in the category of non-commercial quantity. The total recovery effected from two bags is 52 kgs (26 kgs each). It is submitted that the weighment was carried out along with the bags to make it a commercial quantity. Lastly, it is argued that the appellant was a young boy of 20 years at the time of the alleged incident and has suffered the agony of protracted trial. Therefore, in case, the Court is not convinced by the arguments advanced, a lenient view in the matter of sentence be taken.

On the other hand, learned State counsel submits that the recovery was effected from the conscious possession of the appellant, being driver of the vehicle allegedly borrowed by co-accused Jonny Singh. The recovery of the contraband effected is commercial in nature. The Police did not have any motive or *mala fide* to falsely implicate the appellant.

Heard.

It is the case of prosecution that the recovery was effected from the vehicle being driven by the appellant. The appellant was apprehended from the spot. Two plastic bags containing contraband, lying on the backseat of the vehicle, were recovered. Therefore, the bald assertion that the contraband was not recovered from the conscious possession of the

appellant, does not advance his case. Furthermore, the fact that the only independent witness, Gurjant Singh, though cited as a witness, was not examined by the prosecution, also does not brush aside the entire prosecution story, particularly, when the other prosecution witnesses have fully supported its case.

However, this Court finds force in the contention raised by learned counsel for the appellant to the effect that in the instant case, weighment was not done as per law. Admittedly, the contraband was recovered from two plastic bags lying on the backseat of the vehicle in question. Upon weighment, the total weight of the contraband recovered came to be 52 kgs. However, the weighment was carried out along with the two bags. Had the weight of the bags been excluded, there is every possibility that the quantity of contraband would have become 'less than commercial'. There is no explanation on behalf of the prosecution as to why the weight of the bags was not excluded.

Therefore, by giving the appellant the benefit of doubt, it is held that the contraband recovered from the appellant was 'less than commercial' quantity and accordingly, the conviction under Section 15(C) of the NDPS Act is modified to conviction under Section 15(B) of the NDPS Act.

As regards the quantum of sentence, custody certificate dated 20.01.2018, furnished by learned State counsel, in the Court, reflects that the appellant has already undergone 03 years, 03 months and 12 days, as on 19.01.2018. He was a young boy of 20 years at the time of registration of the present FIR on 23.02.2012 and not involved in any other FIR.

Therefore, the sentence of imprisonment of the appellant is reduced from to the period already undergone by him, subject to payment of enhanced fine of ₹25,000/-. On the needful being done, he be released forthwith, if not required in any other case.

Disposed of.

17.03.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No