

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 19.02.2018

1. CRA-S-3409-SB-2017 (O&M)

Sanjay @ Avdesh

... Appellant

Vs.

State of Haryana

... Respondent

2. CRA-S-3846-SB-2017 (O&M)

Kharku Ram

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Y.S. Rathore, Advocate
for the appellant (in CRA-S-3409-SB-2017).

Mr. Parminder Singh, Advocate
for the appellant (in CRA-S-3846-SB-2017).

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in these two appeals is to the judgment dated

05.09.2017, vide which appellant Sanjay @ Avdesh in CRA-S-3409-SB-2017 and appellant Kharku Ram in CRA-S-3846-SB-2017 were held guilty of the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') for keeping in possession two kilograms of ganja without any permit or licence and order of sentence dated 06.09.2017, vide which they were sentenced to undergo R.I. for one year with a fine of Rs.10,000/- each and in default of payment of fine, the appellants were further ordered to undergo simple imprisonment for three months each.

Brief facts of the case are that on 03.9.2015 at about 5 PM, ASI Sultan Singh, along with ASI Salinder Kumar, ASI Rajinder Singh and Constable Kuldeep Singh, was on patrolling and checking duty at Maharana Partap Chowk, Karnal. He received a secret information that the accused Sanjay and Kharku Ram were engaged in the business of selling Ganja Patti and on that day also, they were waiting somebody and if an immediate raid is conducted, they can be apprehended along with the said narcotic substance. On the basis of said information, a raiding party was prepared and the said party reached Devi Lal Chowk, where two persons were seen sitting with their hands on a bag. The said persons were apprehended on the basis of suspicion who told their names as Sanjay and Kharku Ram. They were served with a notice under Section 50 of the NDPS Act and the accused opted to get themselves searched by the said police party only. As a result, the bag being carried by the accused was opened, which was containing Ganja Patti. Out of the said recovered case property, two samples of 100 grams each were drawn and the remaining case property weighed 1 kilogram 800 grams. The samples as well as the residue case property were put into the same bag and they were

sealed with 4 seals of SS. The case property was taken into custody. It had been alleged that the accused had committed an offence under Section 20 of NDPS Act by keeping in his possession Ganja total weighing 2 kilograms. Rukka was sent to the police station, on the basis of which formal FIR was registered. Investigation was carried out by ASI Chandeshwar. Statements of the witnesses were recorded. After completion of the investigation, challan under Section 173 Cr.P.C. was presented in the Court, copy of which was supplied to the accused persons as envisaged under Section 207 Cr.P.C. and they were charge sheeted under Section 20 of NDPS Act vide order dated 04.12.2015 to which they pleaded not guilty and claimed trial.

Counsel for appellant Kharku Ram submits that he does not intend to challenge conviction of the appellant and prays that the sentence awarded to the appellant may be reduced to the period already undergone by him. It is further submitted that out of 01 year R.I. awarded to the appellant Kharku Ram, he has already undergone the total sentence of 01 year and now he is undergoing three months sentence, in lieu of not paying the fine of Rs.10,000/- and out of three months sentence awarded in default of payment of fine, he has further undergone 01 month and 18 days of sentence. It is also submitted that he is presently not facing the trial under any other NDPS Act and being the poor person, he is not in a position to pay the fine of Rs.10,000/-.

Counsel for appellant Sanjay @ Avdesh has also prayed for reduction of sentence of the appellant to the period already undergone by him. It is submitted that out of 01 year R.I., he has undergone 06 months and 06 days of actual sentence and has already paid the fine of Rs.10,000/-.

Counsel for both the appellants submit that since the recovery from the appellants was of non-commercial quantity and they are poor and sole bread earners of their respective families, the sentence may be reduced to the period already undergone by them. Counsel for the appellants have relied upon a judgment in **Tarsem Singh Vs. State of Punjab, 2017 (1) RCR (Crl.) 109**, wherein this Court has reduced the sentence awarded to a convict in the said case from one and half years to 03 months and 29 days, already undergone by him, considering the mitigating circumstances that the convict was the sole bread earner of his family and was facing the protracted trial and recovery was of non-commercial quantity.

Learned State has filed the custody certificates of both the appellants and has not disputed the actual sentence undergone by them.

After hearing learned counsel for the parties, I find merit in the present petition qua the sentence awarded by the trial Court.

Since both the appellants have not contested their conviction, the judgment of conviction dated 05.09.2017 is upheld, however, considering the fact that appellant Kharku Ram has already completed the sentence of one year and is presently undergoing the sentence of three months on account of non-payment of fine of Rs.10,000/- and has further undergone 01 month and 18 days of actual sentence and appellant Sanjay @ Avdesh, out of one year R.I. awarded by the trial Court, has undergone 06 months and 06 days of actual sentence and has deposited the fine of Rs.10,000/- and also in view of the fact that they are facing the trial since 2015; they are only bread earners of their respective families and are not involved in any other case and recovery is of non-commercial quantity, sentence of the appellants is reduced to the

period already undergone by them.

Accordingly, both these appeals are partly allowed. The appellants be released forthwith if they are not required in any other case.

The pending criminal miscellaneous application(s), if any, shall also be disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

19.02.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No