

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1676-SB-2004

Date of Decision: 05.08.2019

Jaswant Singh @ Jassa

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None.

SURINDER GUPTA, J.

This is appeal filed by the appellant against judgment dated 12.08.2004 passed by Judge, Special Court, Kaithal, whereby he was convicted for offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo rigorous imprisonment for eight months and to pay a fine of ₹1000/-. In default of payment of fine he was directed to undergo further rigorous imprisonment for one month.

2. Case of prosecution, in brief, is that on 25.09.2001, ASI Satbir Singh of Police Station Guhla alongwith his police party was present on the bridge of culvert in the area of village Garhi Nazir in connection with patrolling, when the appellant was seen coming on cycle from the side of village Dhaneda. A bag was hanging on the handle of the cycle. On witnessing the police party he tried to take U-turn but was apprehended on the basis of suspicion. ASI Satbir Singh suspected some contraband in the bag and served notice (Ex. PD) as required under Section 50 of 'the Act', giving option to the appellant to get his search conducted by him or before some Magistrate or gazetted officer. The appellant vide consent memo

(Ex. PD/1) opted to get his search conducted before a gazetted officer at which message was given to Deputy Superintendent of Police, Guhla and he was requested to arrive at the spot. On arrival, DSP Dharam Pal Singh Dalal was apprised of the facts and he directed the investigating officer to take search of the bag in possession of the appellant in his presence. On search the bag was found containing poppy-husk, out of which two samples of 100 gms. each were separated, and remaining poppy-husk was found to be 3 kgs. 800 gms. Samples and remaining quantity of poppy-husk were duly sealed and taken into possession. Samples were later on sent to FSL, which vide report (Ex. PG) were found to be that of poppy-husk.

3. The appellant was arrested and after completion of investigation challan was presented against him in Court. On finding a *prima facie* case for offence punishable under Section 15 of 'the Act', the appellant was charge-sheeted, who pleaded not guilty and claimed trial.

4. In support of its case, prosecution examined ASI Balbir Singh as PW-1, HC Satbir Singh as PW-2, C. Shish Pal as PW-3, C. Satish Kumar as PW-4, SI Mool Chand as PW-5, SI Randhir Singh as PW-6, DSP Dharam Pal Dalal as PW-7 and ASI Satbir Singh as PW-8.

5. Statement of the appellant under Section 313 Cr.P.C. was recorded and entire incriminating evidence was put to him to which he pleaded his false implication.

6. During course of arguments addressed by learned counsel for the appellant, he has not challenged the conviction and sentence awarded to the appellant on merit and has requested for a lenient view. He submits that the appellant is not a previous convict and even after registration of this case in the year 2001 he was never found involved in any other case. The

quantity of poppy-husk recovered from the appellant shows that he was not in the trade of drug trafficking. He may have kept 4 kgs. of poppy-husk in his possession for his personal consumption.

7. As per custody certificate produced on record, the appellant is not a previous convict. He was apprehended while carrying poppy-husk on cycle. Facts and circumstances of the case do not suggest that the appellant was a drug paddler. Keeping in view the fact that appellant is first offender and was not found involved in any other case prior or after his conviction in this case, I find reasons to accept the submissions of Learned counsel for the appellant. Custody certificate shows that the appellant has already undergone actual sentence of 04 months and 04 days out of the total sentence of imprisonment of eight months awarded to him.

8. As a sequel of my above discussion, this appeal is partly accepted. The conviction of appellant as recorded by learned trial Court is upheld. Sentence of imprisonment awarded to him for offence under Section 15 of 'the Act' is reduced from rigorous imprisonment of four years to the period of sentence already undergone by him. However, sentence of fine as awarded by the trial Court is maintained.

9. Copy of this order be conveyed to Chief Judicial Magistrate, Kaithal and concerned Jail Superintendent for information and necessary action.

August 05, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***