

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

CRA-S No.1794-SB of 2004 (O&M)

Decided on: 27.05.2019

Panchu Ram

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ruhani Chadha, Advocate (Legal Aid Counsel)
for the appellant.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 06.09.2004 convicting the appellant for offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') as well as the order of sentence of even date vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Brief facts of the case are that on The case of the prosecution in brief, is that on 16.02.2002, SI Barinder Singh alongwith his police party was going from village Dhainthal towards Samana in connection with patrol duty and checking of suspected persons. When they reached the bridge of Bhakra canal in the area of village Dhainthal PW – Subegh Singh met them and was joined in the police party. Then they took the route by the side of canal for going to Samana. The

accused came across the police party, while going on a scooter, and on seeing the police party, he tried to take turn, but was apprehended on the basis of suspicion. SI Barinder Singh apprised him of his right to get his search conducted in presence of some Gazetted Officer or a Magistrate, at which the accused vide dissent memo Ex.PC opted for his search to be conducted in the presence of a Gazetted Officer. A message was sent to the Deputy Superintendent of Police Samana Satbir Singh and he was called at the spot who on reaching there gave his introduction to the accused and also gave him an option to get his search conducted in the presence of some other Gazetted Officer or Magistrate, at which the accused vide consent memo Ex.PD reposed confidence in him. Thereafter, on search of the dicky of the scooter No.PB-11-M-0699 Bajaj Chetak, opium wrapped in the glazed paper was found. Two samples of 10 gms each were separated from the same and the remaining bulk on weightment came to 980 gms, which was put in a separate box (dabbi). The samples were also put in a box (dabbi). Three separate parcels of the samples and the remaining opium were prepared and sealed with the seal of the Investigating Officer bearing impression 'BS' and of DSP bearing impression 'SS'. Separate seal impression Ex.P1 was also prepared. After use the seal of the Investigating Officer was entrusted to the independent witness. Thereafter, the entire case property was taken into possession vide memo Ex.PE. The personal search of the accused was conducted which yielded the recovery of Rs.50/- and memo to this effect Ex.PG was also prepared. The accused was supplied grounds of arrest vide memo Ex.PH. Information memo of the arrest of accused Ex. PJ was prepared.

Rough site plan of the place of recovery Ex.PK was also prepared. Ruqa Ex.PK was sent to the police station, whereupon formal FIR Ex.PK/1 was registered and on return to the police station, the case property along with accused and PWs was produced before the SHO Sewa Singh, who verified the investigation and affixed his own seal bearing impression 'VS' on the case property and the sample seal impression and thereafter the case property was deposited with the MHC. On the next day, the case property and the accused were produced before the Ilaqa Magistrate. Thereafter, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

On presentation of the challan, charge under Section 18 of the NDPS Act was framed against the accused, to which he did not plead guilty and claimed trial.

The prosecution examined PW1 – Inspector Sewa Singh, PW2 – Inspector Budh Singh, PW3 – HC Rajbir Singh, PW4 – ASI Varinder Singh and PW5 – SI Barinder Singh.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case and no recovery was effected from him. However, no defence evidence has been led by the appellant/accused.

The trial Court, after hearing learned counsel for the parties

and after appreciating the evidence on record, convicted and sentenced the appellant/accused under Section 18 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 06.09.2004, the accused/appellant has preferred the present appeal, which was admitted on 17.09.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 08.10.2004.

Counsel for the appellant has argued that independent witness is not examined and the appellant is not the owner of the scooter and the police has not enquired from owner of the scooter as to how the appellant was in possession of the same. It is further argued that there is a delay of 05 days in sending the sample to FSL and there are interpolation in the report. It is also argued that the Gazetted Officer i.e. DSP was not examined in the Court which raises a suspicion about his presence at the spot.

Counsel for the appellant has also argued that the appellant has undergone 3½ months of total sentence out of 18 months rigorous imprisonment awarded by the trial Court. The FIR pertains to the year 2002 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence. It is further submitted that the appellant is a poor person and has his own family to support and the appellant has faced the agony of protracted trial for a period of about 15 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him. Counsel for the appellant has also argued that the appellant is not involved in

any other case.

Counsel for the State has not disputed the fact that the appellant has undergone 3½ months of actual sentence out of 18 months rigorous imprisonment awarded by the trial Court.

After hearing the counsel for the parties, I uphold the judgment of conviction passed by the trial Court, however, considering the fact that the appellant has faced the agony of protracted trial for a period of about 15 years; the appellant has undergone 3½ months of actual sentence and while his sentence was suspended in the year 2004 for a period of about more than 15 years, he is not involved in any other case which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a poor person and has his own family to support, the present appeal is *partly allowed* and the sentence awarded to the appellant is reduced to the period already undergone by him i.e. 3½ months.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

27.05.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No