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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1854-SB-2004
Date of Decision : February 06, 2019

Shankar Dass
..... Appellant

Versus

State of Punjab
..... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Rajesh Lamba, Advocate,
(Amicus Curaie), for the appellant.

Mr. Ashok Kumar Singla, Sr. DAG, Punjab,
for respondent-State .

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 24.08.2004, passed by learned Judge of Special Court, Muktsar whereby appellant-Shankar Dass was convicted and sentenced as under:-

Under Section	Sentence	In default
15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “ the Act ”)	to undergo Rigorous Imprisonment for a period of Three years and to pay a fine of Rs.15,000/-	to further undergo R.I. for a period of six months.

2. Facts relevant for the purpose of decision of the appeal; that on 16.07.2000, the police party was on patrolling duty and when they reached in the area of Gobind Nagri, near the water course, they saw the

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appellant on the bank of the canal carrying a plastic bag on his right shoulder. On seeing the police party, he tried to fled away from the spot by turning back. On this, the accused was apprehended by ASI Darshan Singh with the help of other police officials and the bag was searched in the presence of Gazetted officer, DSP Gurdev Singh, Muktsar and poppy husk was recovered. Out of the recovered quantity, 250 gms. of poppy husk was separated as sample and the remaining poppy husk came to be 29 Kgs. 750 gms. Two separate parcels were prepared and both were sealed by the Investigating Officer with his seal bearing letters 'DS' and that of the seal of D.S.P. bearing letters 'GS'. Both the parcels, sample seal and the bag were taken into possession vide recovery memo Ex. P9. From the personal search of the accused-appellant Rs.120/- currency notes were recovered which were taken into possession vide separate personal search memo signed by the accused and attested by the PWs. Ruqa Ex. P-11 was sent to the police Station on the basis of which formal FIR Ex. P12 was recovered by ASI/SHO Kirpal Singh. On 24.07.2000, the sample was sent to the Chemical Examiner and on receipt of report of Chemical Examiner and after completion of investigation proceedings, challan was presented in the Court for trial.

3. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, learned Judge of Special Court, Muktsar held the accused-appellant guilty and convicted him for commission of offence punishable under Section 15 of the Act and sentenced him vide judgment

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and order dated 24.08.2004 as mentioned in para No.1 above.

4. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

5. On 9.1.2019 when the appeal was listed for hearing, no one had put in appearance on behalf of the appellant and the case was adjourned to 17.1.2019. On the adjourned date also, the position remained the same and the appellant remained unrepresented. Accordingly on 17.1.2019, Shri Rajesh Lamba, Advocate was appointed as *Amicus Curiae* to represent the appellant and the case was adjourned for today (06.02.2019).

6. At the very outset, learned counsel representing the appellant contended that he does not challenge the judgment of conviction and a lenient view on the point of sentence be taken. As per the custody certificate dated 05.02.2019, the appellant has already undergone total sentence of 01 year, 07 month and 02 days (including remissions) against the awarded sentence of 03 years.

7. Learned State counsel contended that the appellant does not deserve any concession and the present appeal be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Court has already appreciated the evidence in its perspective manner. The prosecution has successfully proved on record the recovery of poppy husk from the accused-appellant and all the witnesses have supported the prosecution version. Learned trial Judge has rightly held that the testimonies of official witnesses cannot be discarded merely on the ground of their official status and there is nothing on record

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to show that the prosecution witnesses had any enmity to falsely implicate the accused. As such, no interference is called for in the findings recorded by learned trial Judge and the present appeal qua judgment of conviction passed by the Court below, stands dismissed.

9. As regard to quantum of sentence, this Court is certainly inclined to take a lenient view in this case. Considering the fact that the appellant has already undergone total sentence of 01 year, 07 month and 02 days (including remissions) against the awarded sentence of 03 years as per the custody certificate dated 05.02.2019 and that he is not a previous convict under the Act, taking a lenient view on the point of sentence, the order of sentence is modified to the extent that the sentence of appellant – Shankar Dass in this case shall be reduced to the period he has already spent while remaining in custody during the period of trial and present appeal.

10. Resultantly, the present appeal stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

February 06, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes