

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

CRA-S No.672-SB of 2004 (O&M)

Reserved on: 23.01.2019

Decided on: 25.01.2019

Sheelo Kaur

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kamal Kumar Yogi, 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 as well as the order of sentence dated 13.03.2004 vide which the appellant was convicted for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 06 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 09.02.1999, SI Harjinder Singh, CIA Staff Bahadur Singh Wala along with ASI Amrik Singh, H.C. Mahesh Inder Singh, C. Jaswant Singh, Lady SPO Hardev Kaur and Lady SPO Manjit Kaur were on patrolling duty in a government vehicle, bearing registration No.PB-13-B-1580, which was being driven by Gulzar Singh and they were going from village Jhal towards village

Bathan and when the police party covered a distance of 200 yards from the bridge of canal minor Jhal, a woman, having a plastic bag with its mouth open containing poppy husk, was found sitting on the edge of the pavement of canal minor and she was waiting for the customers. Thereafter, she was apprehended by the Investigating Officer and on interrogation, she disclosed her name as Sheelo wife of Amrik Singh. The Investigating Officer, thereafter, told the accused that the poppy husk recovered from her is to be weighed and if she so desired then any Gazetted Officer or a Magistrate could be called at the spot. But she reposed confidence in him (the Investigating Officer) and her consent statement Ex.P7 was recorded, which was thumb marked by her and attested by ASI Amrik Singh, Lady SPO Hardev Kaur and H.C. Mahesh Inder Singh. Out of the recovered contraband, two samples of 250 grams each were separated and converted into parcels. Thereafter, the remaining poppy husk, upon being weighed, came to 9 Kgs and 500 grams, and the same was put back into the same plastic bag and made into a parcel. All the three parcels were sealed by the Investigating Officer with his seal bearing impression 'HS'. Sample seal chit Ex.P2 was prepared separately and the said seal after use was handed over to ASI Amrik Singh. The entire case property including the sample seal chit was taken into possession vide recovery Memo Ex.P8, and the same was attested by the aforesaid witnesses. Further, upon personal search of the accused conducted by Lady SPO Hardev Kaur, the currency of Rs.25/- was also recovered and the same was taken into possession vide Memo Ex.P9, which was thumb-marked by accused and attested by Lady SPO Hardev Kaur, ASI Amrik Singh and Head

Constable Mahesh Inder Singh. Thereafter, ruqa Ex.P10 was sent to the Police Station, through C. Jaswant Singh, on the basis of which formal FIR, Ex.P11 was recovered by MHC Bikkar Singh. Thereafter, the Investigating Officer prepared the rough site plan of the place of recovery vide Ex.P13 with correct marginal notes and recorded the statement of the witnesses. The arrest memo of the accused Ex.P12 was prepared, which was thumb marked by the accused and attested by the aforesaid witnesses. On reaching the Police Station, the Investigating Officer produced the accused, PWs and the case property before SI/SHO Swaran Singh, who after verifying the facts of the case, put his own seal bearing impression 'SS' on all the parcels including the sample seal chit and also attested the same. On the directions of the SHO, the Investigating Officer, deposited the case property with MHC Bikkar Singh with seals intact. The accused was sent to lock-up under the supervision of Lady SPO Hardev Kaur and Lady SPO Majit Kaur. Thereafter, on receiving the report Ex.P14 from the office of the Chemical Examiner and on completion of investigation, challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was presented before the trial Court.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused, to which she did not plead guilty and claimed trial.

The prosecution examined H.C. Bikkar Singh as PW1, Inspector Swaran Singh as PW2, C. Gurdas Singh as PW3, SI Harjinder Singh as PW4, ASI Amrik Singh as PW5 and Lady SPO Hardev Kaur as PW6.

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

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 15 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 13.03.2004, the accused/appellant has preferred the present appeal, which was admitted on 26.03.2004 and the sentence of the appellant/accused was also suspended vide order of even date i.e. 26.03.2004.

Counsel for the appellant has submitted that he do not want to challenge the judgment of conviction and argued on the quantum of sentence. It is submitted that the appellant is a lady aged about 60 years and has undergone 03 months and 03 days of total sentence out of 06 months rigorous imprisonment awarded by the trial Court. It is further submitted that the FIR pertains to the year 1999 and the sentence of the appellant has already been suspended by this Court during pendency of the present appeal and she has never misused the concession of suspension of sentence. It is also submitted that the appellant is a poor person and has her own family to support and the appellant has faced the agony of protracted trial for a period of about 20 years, therefore, by

taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by her.

Counsel for the State has not disputed the fact that the appellant has undergone 03 months and 03 days of total sentence out of 06 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 is a lady aged about 60 years and has faced the agony of protracted trial for a period of about 20 years; the appellant has undergone 03 months of total sentence and while her sentence was suspended in the year 2004 for a period of about more than 15 years, she is not involved in any other case which shows that she has improved her character and has joined the mainstream of the society and also in view of the fact that she is a poor person and the law with regard to a woman is more liberal, the present appeal is *partly allowed* and the sentence awarded to the appellant is reduced to the period already undergone by her i.e. 03 months and 03 days.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

25.01.2019
yakub

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