

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1310-DB-2014 (O&M)
Date of decision :13.12.2019

Swinder Singh

..... Appellant

versus

Intelligence Officer Directorate of Revenue Intelligence, Amritsar.

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present : Ms. Monu Khan, Advocate
for the appellant.

Mr. D.D.Sharma, Advocate
for the respondent.

Mr. H.S. Sullar, DAG Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the conviction and sentence of the appellant, in a complaint registered under Sections 21, 23, 25, 27-A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). Vide judgment and order dated 14.05.2011, the appellant was convicted as under:-

Name of the accused	Offence Under Section	Sentence
Swinder Singh	21 of the NDPS Act	R.I for a period of Twelve years along with fine of Rs. 1,20,000/- and in default of fine further R.I. for a period of one year.
	23 of the NDPS Act	R.I for a period of Twelve years along with fine of Rs. 1,20,000/- and in default of fine further R.I. for a period of one year.

Both the substantive sentences shall run concurrently.

2. As per the case of the prosecution out of the two convicts one Manjinder Singh has died and no appeal has been filed on his behalf. Therefore, the present appeal has been filed on behalf of Swinder Singh only.

3. As per the case of the prosecution, Sh. K.S.Ratra, Intelligence Officer, Revenue Intelligence, New Delhi received secret information on 26.1.2008 that one white coloured Maruti Zen car bearing registration No. PB-02-N-1941 would be coming towards Amritsar with large quantity of contraband. He sent this information to Sh. K.K. Dasmana, Senior Intelligence Officer, Directorate of Revenue Intelligence, New Delhi who passed it on to Shri A.K. Khatri, Additional Director General, DRI, Delhi Zonal Unit and who in turn passed to Sh. Dheeraj Rastogi, Joint Director of Revenue Intelligence, Ludhiana. He reduced it into writing Ex. P1 and sent it further to his Senior Officer, who laid a naka at Mehta Chowk, District Amritsar on 27.1.2008 in the wee hours. At about 6:00 A.M., a white coloured Maruti Zen bearing PB-02-N-1941 was seen coming from Baba Bakala side and was turning towards Shri Hargobind Pur. The same was stopped. The driver was one Manjinder Singh (deceased) while the appellant Sawinder Singh was sitting on the passenger seat in front. The officers revealed their identities and informed that they had suspicion that there was contraband in the car. The option was given to them under Section 50 of the NDPS Act wherein they objected for being searched by officer. Both of them further requested that they be searched at secret place since they are afraid for their lives. Consequently, they were taken to DRI Office, Amritsar

where two independent witnesses were also associated. On their search nothing incriminating was recovered but from the car a blue black bag lying at the feet of appellant-Sawinder Singh in which there were four packets of heroin with a net weight of 3.980 Kgs was recovered. On completion of all other investigation and necessary formalities, the case was sent up to trial.

4. In the course of the trial, as many as 4 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C., in the course of which, he denied all the allegations of the prosecution and took the plea of being falsely implicated.

5. At the conclusion of the trial, the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order, convicting and sentencing the appellant, as mentioned above. Hence, the present appeal.

6. The first argument raised by learned counsel for the appellant is that as per the case of the prosecution the car belonged to the appellant but no proof of ownership was placed on record. In our opinion, this cannot be taken to be a fatal flaw as there is no doctrine of law that the contraband can only be transported in one's own vehicle. Merely because the ownership of the car was not established to be that of the appellant would not be fatal to the case of the prosecution.

7. Second argument raised by the learned counsel for the appellant is that independent witnesses were not examined. To our mind, that is also not a fatal flaw. It has been repeatedly held that independent witnesses can always be susceptible to be won over and that conviction only on the basis of the testimony of the official witnesses is not illegal provided that the

testimony should be clear, cogent and credible. We find that all these three conditions are met in the present case.

8. It was then argued that the statements under Section 67 of the NDPS Act were extracted involuntarily from the appellant. However, a perusal of the statement reveals that the appellant was duly informed that his confession could be taken against him. In view of his previous conduct in insisting on being searched by present officer in safer place, it cannot be said that his statement is involuntary.

9. In conclusion, we are not inclined to upset the conviction and consequently, dismiss the appeal against the conviction.

10. Facing this situation, the learned counsel further argued that on the question of sentence that no special reasons have been given by the Court for imposing sentence of 12 years.

11. Section 32-B of the NDPS Act was inserted by the Act 9 of 2001. The statements of objects and reasons of Amendment Act 9 of 2001 are as under:-

"STATEMENT OF OBJECTS AND REASONS:- Amendment Act 9 of 2001:- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years' rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the

Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.”

12. Section 32-B of the NDPS Act was introduced in order to rationalise the sentencing structure as well as for enumerating various factors, which may be taken into account for imposing a higher punishment than the minimum term of imprisonment provided. A perusal of Section 32-B of the NDPS Act, clearly lays down that the Court, in addition to such factors as it may deem fit, may take into account the factors enumerated in the said Section for imposing a punishment higher than the minimum term of imprisonment, therefore, on a plain reading, it is clear that a Court may consider such factors in addition to those enumerated as it may deem fit. In the present case, the heavy recovery of heroin from the appellant-Swinder Singh, has weighed with the Court to award him imprisonment for twelve years.

13. We are of the considered opinion that sentence of imprisonment awarded is rather harsh. The very objects and reasons given in the Amendment Act 9 of 2001 lays down that Section 32-B of the NDPS Act is to provide rationalization of sentence structure. Their Lordship of the Apex Court in the case of ***“Rafiq Qureshi V/s Narcotic Control Bureau, Eastern Zonal Unit” 2019 (6) SCC 492***, have held that in a case where a higher punishment than the minimum is awarded without adverting to the factors enumerated under Section 32-B of the NDPS Act, award of sentence of higher than minimum punishment, can be interfered with. We find that ends of justice would be sub-served in reducing the sentence under the NDPS Act.

14. In view of the factual matrix of the case, we find that as per the custody certificate, the appellant has undergone 10 years, 5 months and 13 days of actual imprisonment and there is nothing to suggest that he is a previous convict under the NDPS Act. In the circumstances, the sentence is reduced to that already undergone. However, sentence of fine and imprisonment in default thereof, is maintained. In case he pays fine, he be released forthwith, if not required in any other case.

15. With the aforesaid modification in the sentence under the NDPS Act, the appeal is dismissed.

16. Since the main case has been decided, pending applications, if any, stand disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

13.12.2019
Janki

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No