

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

CRA-S-271-SB of 2006

Date of Decision: 10.07.2019

Jaspal Singh

....Appellant

Versus

State of Haryana

...Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. H.S. Jaswal, Advocate
for the appellant.

Mr. Saurabh Mago, AAG, Haryana.

MAHABIR SINGH SINDHU, J.(Oral)

Present appeal has been filed against the impugned judgment of conviction and order of sentence dated 10.12.2005 passed by learned Judge, Special Court, Panipat, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs. 75,000/- under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and in default of payment of fine to undergo further rigorous imprisonment for nine months.

Learned State counsel has filed the custody certificate dated 07.05.2019 of the appellant in the Court today. The same is taken on record.

At the very outset, learned counsel for the appellant states that the appellant has undergone the entire period of sentence and also deposited the amount of fine i.e. Rs. 75,000/- with the Special Court, Panipat. Thus, he is not pressing the appeal.

Learned State counsel has acknowledged the factum of actual sentence undergone as well as deposit of fine.

Although, learned counsel for the appellant is not willing to argue the matter on merits but since present is first appeal against the conviction, therefore, this Court is under obligation to examine the legality and validity of the conviction recorded by the learned trial Court.

It transpires that prosecution was launched against the appellant on the basis of suspicion by ASI Bijender Singh to the effect that he along with other police officials was present on the main gate of new Bus Stand, Samalkha and while he was patrolling, he noticed a person coming towards the main gate carrying a bag in his right hand and on seeing the police party he started brisk walking towards booth No.1 of Bus Stand but on suspicion he was stopped. Since ASI Bijender Singh was suspecting some narcotic in his bag, so a notice under Section 50 of the NDPS Act was served upon him by giving option to search him either in presence of a gazetted officer or a Magistrate but he reposed full faith in him. On search of his bag 1 kg. 400 grams of opium was recovered out of which two samples each of 20 grams were separated. Samples and remaining contraband were sealed separately and taken into possession vide a memo duly attested by the witnesses and the seal after use was handed over to Head Constable Sham Lal and rukka was sent to the police Station upon which FIR was registered. After complying with the provisions of Section 207 Cr.P.C., accused was charge-sheeted for commission of

offence punishable under Section 18 of the NDPS Act to which he pleaded not guilty and claimed trial.

After routine investigation, report under Section 173 (2) Cr.P.C. was submitted and taking into consideration the material available on record, learned trial Court framed charges under Section 18 of the NDPS Act and which ultimately resulted in conviction of the appellant as mentioned above.

Learned State counsel has also supported the version of prosecution by submitting that the contraband was recovered from the conscious possession of the appellant.

In order to prove its case, prosecution examined Constable Ramesh Kumar, as PW1, ASI Dharambir Singh as PW2, SI Rattan Singh as PW3, ASI Ishwar Singh as PW4, ASI Shyam Lal as PW5, Constable Davinder Kumar as PW6, ASI Bijender Singh as PW7 and Constable Rajender Singh as PW8. Recovery of contraband is duly proved by PW7 ASI Bijender Singh, Investigating Officer and PW5 ASI Sham Lal, one of the witnesses of recovery and fully supported the version recorded in the FIR as well as the recovery of contraband being a witness to the recovery memo. FSL report indicates that contraband recovered from the appellant was identified as *Opium* and falls within the category of Narcotic Drugs, therefore, the irresistible conclusion is that the recovery of the contraband is duly proved. There is no infirmity in the investigation as well as procedural aspect of the matter as the recovery was at public place from a bag carried by appellant in his right hand.

In view of the above this Court is of the firm opinion that the course adopted by the learned trial Court is absolutely legal and justified, this Court does not find any substance in the present appeal on merits as well.

Appeal stands dismissed.

[MAHABIR SINGH SINDHU]
JUDGE

July 10, 2019
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Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no