

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

**CRA-S-2037-SB-2017 (O&M)
DECIDED ON: 12.03.2019**

STATE OF HARYANA

...PETITIONER..

VERSUS

YOGESH GARG

...RESPONDENT..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ashok Muthreja, DAG, Haryana for the petitioner-State.

Mr. N.S. Shekhawat, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

CRM-17298-2017

Through this application under Section 5 of the Limitation Act, prayer has been made for condonation of delay of 167 days in filing the instant revision.

Heard.

Learned State counsel submits that after perusing the judgment dated 30.08.2016, ld. District Attorney, Jhajjar opined that it is a fit case to file an appeal, for enhancement of sentence of the accused before this Court and referred the same vide memo No.2350/DA/Jhajjar/16 dated 09.09.2016 to the office of Superintendent of Police, Jhajjar, who further forwarded the same to District Magistrate, Jhajjar vide memo No.2350/DA/JJR/16 dated 09.09.2016. Thereafter, the time consumed in the office of District Magistrate and Advocate General Haryana.

The above plea for condonation of delay which always occurred due to lengthy official procedure is being taken since last 2-3 decades in general by State in every case. Much water has already flown. Now, it is the need of hour that the official machinery should sensitize and may think thousand times and move fast, before adopting any legal course. Since no cogent reason or plausible explanation has been furnished by the applicant-State for condonation of delay in filing the appeal, therefore, the application is dismissed.

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Through this appeal, State has sought enhancement of sentence awarded to respondent by the trial court, vide order of sentence dated 30.08.2016, whereby, he was sentenced to undergo rigorous imprisonment for five years and pay fine of Rs.20,000/- under Section 17(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "Act"). In default of payment of fine, to further rigorous imprisonment for one year, for having the possessions of 935 gms of liquid opium without any permit or licence.

Learned State counsel contends that Section 17-B of the Act provides maximum punishment for 10 years for keeping the contraband falling under "commercial quantity" i.e. 2.5 kg, whereas "non-commercial" quantity is 25 grams. The respondent was found apprehended with conscious possession of 935 gms of liquid opium. Therefore, he ought to have convicted for 10 years for keeping contraband in between "commercial quantity" and "non-commercial

quantity"

On the other hand, learned counsel for the respondent refuting the above submission, submits that respondent is a first offender. He has not been found involved in any other case. The punishment awarded to the respondent is already disproportionate and on higher side to the alleged offence committed by him. Therefore, no further enhancement in the sentence is required.

Having given thoughtful consideration to the rival submissions, this Court finds instant appeal completely devoid of any merit for the reasons to follow:-

1. Respondent is a first offender. The maximum punishment provided under Section 17-B of the Act is 10 years. The respondent has already been sentenced for 5 years, which the trial court deemed it appropriate.

2. Learned State counsel has not been able to convince this Court, as to why and in what extra-ordinary circumstances, this Court should interfere with the discretion exercised by the trial court in awarding sentence to the respondent.

In view of discussion above, this Court is not inclined to differ with the findings given by the trial court vide impugned judgment dated 30.08.2016. Consequently, it is upheld.

Dismissed.

12.03.2019

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Whether speaking/reasoned

Whether reportable

(RAMENDRA JAIN)

JUDGE

Yes/No

Yes/No