

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

CRA-S No.1427-SB of 2004 (O&M)

Decided on: 17.10.2019

Manohar Kumar

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Krishan Singh, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction as well as the order of sentence dated 14.07.2004, vide which the appellant was convicted for an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and he was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months.

Brief facts of the case are that on 28.02.2003 ASI Hardev Singh, Incharge Police Post Kalanaur, accompanied by H.C. Swaran Lal, U.G.C. Diwan Chand. C. Parveen Kumar, H.C. Shiv Charan was present at Kamalpur Ghat, when he met Satish Kumar son of Atma Ram. They were talking with each other when the accused with a bag

on his right shoulder was seen coming from the side of Yamuna Nagar river. He on seeing the police party threw the bag and turned back in order to fled away from the spot. Thereafter, on suspicion he was nabbed by the police party. The contents of the bag were examined from its outer side and it was suspected that the bag was containing choora post. Therefore, the accused was served a notice (Ex.PB) under Section 50 of the NDPS Act, seeking his option of search of the bag before a Magistrate or a Gazetted Officer or by the ASI himself. Thereafter, he disclosed that the bag was containing choora post and reposed confidence in the ASI. Thereafter, the said ASI conducted the search of the bag and it was found containing 10 Kg of choora post. Thereafter, two samples of 250 gms each were separated for analysis. The samples and the residue were sealed separately by the ASI with his seal bearing impression 'HS'. The seal after use was handed over to Satish Kumar. Thereafter, all the three parcels were taken into police possession vide memo Ex.PC. Ruqa Ex.PA was sent to the Police Station on which FIR Ex.PA/1 was registered. Rough site plan Ex.PD of the place of recovery was prepared. The accused was produced before the Station House Officer, Des Raj, who inquired the facts of the case from the accused and the witnesses and also examined the case property and thereafter, he put his own seal bearing impression 'D.R.' on the parcel after its examination and directed ASI Hardev Singh to deposit the case property with the Incharge Malkhana. Thereafter, a sample parcel was sent for analysis before the Chemical Examiner vide report Ex.PE and on receiving the report, the same was found containing choora post.

After completion of the investigation, the challan under Section 173 of

the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted before the trial Court.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused on 12.08.2003, to which he did not plead guilty and claimed trial.

The prosecution examined HC Balinder Singh as PW1, C. Naresh Kumar as PW2, ASI Phool Chand as PW3, ASI Hardev Singh as PW4, UGC Diwan Chand as PW5, SHO Des Raj as PW6 and EHC Ved Singh as PW7 and thereafter, closed the evidence.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him but he denied the allegation of the prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence has been led by the appellant/accused.

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 as well as the order of sentence dated 14.07.2004, the accused/appellant has preferred the present appeal, which was admitted on 23.07.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 20.08.2004.

Counsel for the appellant has not challenged the finding recorded by the trial Court on merits and he restricted his argument qua quantum of sentence only and argued that the appellant has undergone

01 month and 28 days of total sentence out of 01 year rigorous imprisonment awarded by the trial Court and he is not involved in any other case. The FIR pertains to the year 2003 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence. It is further submitted that the appellant is a poor person and has his own family to support and the appellant has faced the agony of protracted trial for a period of about 16 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him.

Counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court ***“State of Haryana vs Joginder Ram”***, 2015(6) RCR (Criminal) 97 to argue that the sentence under the NDPS Act can be reduced to the period already undergone by the accused. Counsel for the appellant has further relied upon the judgment ***“Mukesh Kumar vs State of M.P. (Now Chhatisgarh)”***, 2015(1) RCR (Criminal) 251, wherein the Hon'ble Supreme Court in case of a conviction of 06 months rigorous imprisonment had reduced the sentence of the appellant to the period already undergone by him. Lastly, counsel for the appellant has relied upon the judgment passed by this Court in ***“Tarsem Singh vs State of Punjab”***, 2017(2) RCR (Criminal) 109 wherein it has been held by this Court that where recovery is of non-commercial quantity; the accused has undergone the substantive sentence; he is not involved in any other case, his sentence can be reduced to the period already undergone by him.

Counsel for the State has not disputed the fact that the

appellant has undergone 01 month and 28 days of total sentence out of 01 year 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 has faced the agony of protracted trial for a period of about 16 years; the appellant has undergone 01 month and 28 days of total sentence and while his sentence was suspended in the year 2004, for a subsequent period of about more than 15 years, he is not involved in any other case which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a poor person and has his own family to support, the present appeal is *partly allowed* and the sentence awarded to the appellant is reduced to the period already undergone by him i.e. 01 month and 28 days.

Bail/surety bonds of the appellant stands discharged.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

17.10.2019
yakub

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