

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

CRA-S-2272-SB-2004

Date of decision: 18.2.2020

Jagdish

...Appellant

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Dinesh Maurya, Advocate for
Mr.GS Sandhu, Advocate for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal has been directed against the judgment of conviction and order of sentence dated 16/18.9.2004 passed by the learned Judge Special Court, Karnal, whereby the accused-appellant was sentenced to undergo rigorous imprisonment for a period of one year and nine months with a fine of Rs.5000/- and in default of payment of fine, to further undergo RI for a period of three months under Section 18(c) of NDPS Act.

The facts necessary for adjudication of the matter as narrated in para no.2 of the impugned judgement are as under:-

“ The brief facts of the case giving rise the prosecution are that on 28.8.2001 Inspector Ram Niwas the then SHO of P.S. Assand alongwith other police officials was present at bridge drain near Power House on Salwan Road Assand. Accused Jagdish came from the side of village Dupedi who on the

ground of suspicion was apprehended. Expressing doubt of some narcotic substance in possession of Jagdish Inspector Ram Niwas served notice Ex.P3 under Section 50 of the Act informing him whether he wanted to get his search effected in the presence of Magistrate or Gazetted officer of police but accused vide his reply Ex.P4 opted to get his search in the presence of Magistrate. Both Ex.P3 and Ex.P4 were signed by accused and witnesses. Thereafter, Inspector Ram Niwas alongwith witnesses brought him before Sh. Dharam Pal, Naib Tehsildar who was present in his office. Inspector Ram Niwas narrated facts to Naib Tehsildar who also give his identity to the accused and then under his supervision and control Inspector Ram Niwas took personal search o accused and on search opium wrapped in blue colour polythene was recovered from the right side pocket of the pants of accused. Out of which two samples of 20 grams each were separated and the remaining opium on weighment came to 400 grams. Both the samples Ex.P8/MO, Ex.P9/MO and remainder opium Ex.P10/MO were made into different parcels and were sealed with seal RS.Naib Tehsildar also affixed his seal on all the parcels bearing impression DP. The sample seal impression of RS and DP was also prepared and seal after use was handed over to ASI Raj Kumar Naib Tehsildar retained his seal with him. All the parcels were taken into police possession vide memo Ex.P5. Inspector Ram Niwas sent ruqqa Ex.P1 to the police station for registration of the case on the basis of which formal FIR Ex.P2 was registered by ASI Ram Chand who also made his endorsement Ex.P3 on ruqqa Ex.P1. Inspector Ram Niwas first recorded statements of witnesses in the office of Tehsildar and then came to the place of recovery where he prepared rough site plan of the place of recovery Ex.P6 with correct marginal notes, recorded statements of witnesses at the spot and formally arrested the accused.

After completion of the investigation, the challan was presented in the Court. The appellant was charged under Section 15 of the Act, to which, he did not plead guilty and claimed trial.

In order to substantiate the charges, the prosecution had examined SI Ramesh Chand as PW1, Constable Suresh as PW2, SI Raj Kumar as PW3, Dharam Pal Naib Tehsildar as PW4, Inspector Ram Niwas as PW5, HC Dharambir as PW6 and ASI Surjit Singh as PW7.

When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded false implication and innocent.

After analysing the entire evidence and hearing the learned counsel for the parties, the learned Trial Court convicted and sentenced the accused-appellant as noticed at the outset.

Feeling dissatisfied with the same, the accused- appellant preferred the present appeal.

At the very outset, learned counsel for the appellant submits that he does not challenge the judgment of conviction dated 16.9.2004 and confines his prayer only to reduction in quantum of sentence awarded vide order dated 18.9.2004 to the sentence already undergone by the appellant in the instant case as the appellant is a poor person and the only earning members of his family.

A close examination of the prosecution evidence reveals that the findings returned by the learned trial Court for arriving at the conclusion that the charge has been established against the accused are based on correct

appreciation of evidence on record. Therefore, the conviction is maintained.

Hon'ble the Supreme Court in 2006(4) R.C.R. (Criminal) 645 titled as "**R. Soundarajan V. Seed Inspector, Coimbatore and another**" observed as under:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment"

The sentence of the appellant was suspended by this Court on 7.3.2005. The FIR in the instant case was registered in the year 2001. The appellant has suffered protracted trial of more than 19 years. The appellant has already undergone 1 year, 4 months and 7 days including remission out of the total substantive sentence of 1 year 9 months. Nothing has been pointed out by the learned counsel for the State that the appellant has misused the concession of bail during the pendency of the appeal and repeated the offence, therefore, this Court feels that the ends of justice would be met if the sentence of imprisonment awarded to the appellant is reduced to the period already undergone by him. However, the sentence of

fine is enhanced to Rs.25,000/- to be deposited in the Poor Patients Funds at General Hospital, Karnal within 45 days from the date of receipt of the certified copy of the judgment, failing which, the appeal shall be deemed to be dismissed without further notice.

The present appeal is partly allowed and the judgment and order of the learned trial Court stands modified to the extent indicated above.

18.2.2020
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No