

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3604-2019 (O&M)
Date of decision: 09.01.2020

Ramandeep

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Shivoy Dhir, Advocate
for the appellant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgment of conviction as well as the order of sentence dated 25.09.2018, vide which the appellant was convicted for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 02 years and 06 months along with a fine of Rs.15,000/- and in default of payment of fine, the appellant was further ordered to undergo R.I. for a period of 04 months.

Brief facts of the case are that on 03.12.2015, Inspector Dilbagh Singh along with other police officials on private car, having laptop and printer, were going from P.S. City Nawanshahr towards link road of Village Barnala Kalan, in connection with patrolling and checking of suspected persons. When

the police party was going towards Barnala gate, after crossing canal bridge at about 04:30 pm and reached near the room of motor situated at left side, one person was seen coming on foot from the front side of Barnala gate. On seeing the police party, the said person became perplexed and tried to turn towards the fields of his left side. On suspicion, the said person was apprehended by Investigating Officer with the help of other police officials and his whereabouts were inquired. Thereafter, Inspector Dilbagh Singh disclosed his identity regarding his name, rank and posting to the accused and also told the accused that he suspects some contraband substance in his possession and his search is to be conducted. He also apprised the accused that he has a legal right to get his search conducted in the presence of any Gazetted Officer or Magistrate and the same can be called at the spot, but accused reposed confidence in him and consent statement of the accused was recorded. Efforts were made to join a witness from the public, but none was ready. Thereafter, search of accused was conducted, which led to recovery of intoxicant material wrapped in polythene paper from right pocket of the pant worn by the accused. Out of the same, one sample parcel of 05 gram intoxicant material was separated with the help of electronic machine and on weighing, the remaining came to be 25 grams and its parcel was also prepared. Both the parcels were sealed by Inspector Dilbagh Singh with his seal bearing impression 'DS'. Form No.29 and sample seal impression were prepared in triplicate. The seal, after use, was handed over to HC Pavinderjit. The entire case property along with form No.29 and sample seal impression were taken into police possession by Inspector Dilbagh Singh, Investigating Officer, vide recovery memo attested by the witnesses. Ruqa was sent to the police station for registration of the case on the basis of which,

formal FIR was registered against the accused. Accused was arrested and his personal search was conducted and the memos were attested by the witnesses. Inspector Dilbagh Singh, the Investigating Officer prepared rough site plan of the place of recovery with correct marginal notes and recorded the statements of the witnesses.

After recording statements of the witnesses, completion of the investigation including on receipt of report of the Chemical Examiner, challan against the accused was presented before the trial Court. Finding a prima facie case, charge under Section 22 of NDPS Act was framed against the accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 Constable Rajinder Singh, PW2 Inspector Raj Kumar, PW3 ASI Parvinderjit, PW4 HC Balbir Singh and PW5 Inspector (retd.) Dilbagh Singh, the Investigating Officer and closed the evidence.

After conclusion of the prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant-accused denied the allegation of the prosecution and pleaded false implication. In defence, the accused did not produce any evidence.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction and order of sentence of even date i.e. 25.09.2018, convicted and sentenced the appellant/accused under Section 22 of NDPS Act.

Learned counsel for the appellant, at the very outset, submits that

since out of total sentence of two years and six months awarded by the trial Court, the appellant has already undergone 01 year, 07 months and 12 days of actual sentence, he does not want to address arguments on merits and sentence of the appellant be reduced to the period already undergone by him.

Learned counsel for the appellant, in support of his arguments, has further submitted that the appellant is the first offender and he is not involved in any other case. It is further submitted that the appellant is a poor person and has his own family to support; he has faced the agony of protracted trial and the trial Court has not granted the benefit of Probation of Offenders Act, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him.

Learned State counsel has filed the custody certificate dated 09.01.2020 in the Court today and has not disputed the fact that the appellant has undergone total sentence of 01 year, 07 months and 12 days of actual sentence, out of two years six months R.I. awarded by the trial Court.

After hearing learned counsel for the parties, I uphold the judgment of conviction passed by the trial Court, as the same is based on appreciation of prosecution evidence, however, considering the fact that the appellant has faced the agony of protracted trial; he has already undergone 01 year, 07 months and 12 days of actual sentence; 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 sentence awarded to the appellant is reduced to the period already undergone by him i.e. 01 year, 07 months and 12 days. However, the imposition of fine of Rs.15,000/- is upheld.

The appellant is directed to deposit the fine, if not deposited so far, within a period of 02 months from today.

Since the appellant is in judicial custody, he be released forthwith, if not involved in any other case.

[ARVIND SINGH SANGWAN]
JUDGE

09.01.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No