

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-778-SB-2007 (O&M)

Date of decision : 22.4.2022

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Bhagwan Singh @ Pappu

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. B.S. Saroha, Advocate
for the appellant.

Mr. S.S. Pannu, Deputy Advocate General,
Haryana.

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H. S. Madaan, J. (Oral)

1. Appellant/accused Bhagwan Singh @ Pappu, son of Nathu Singh, alongwith his co-accused Nachhattar Singh son of Gurdayal Singh, both residents of village Haripura, District Sirsa, were apprehended by the Police Party headed by SI Shiv Kumar from Police Station Sirsa, on 3.7.2002, at 3.30 P.M., in the area of bridge of Canal, Village Haripura, while they were coming on a bicycle. Nachhattar Singh, who was plying the bicycle, managed to run away, whereas Bhagwan Singh @ Pappu, who was sitting on the carrier of the bicycle, fell down. On suspicion, his personal search was

conducted, as per rules, which resulted in recovery of a polythene bag containing opium. Two samples of 20 grams each, were separated there from by SI Shiv Kumar and on being weighed, the remaining recovered opium came out to be 460 grams. The samples and the bulk were converted into sealed parcels, which were taken into police possession. The accused was arrested in this case. Formal FIR was got registered. Investigation into the case was carried out. Nachhatar Singh got pre-arrest bail from the Court. He was formally arrested and made to join the investigation. Ultimately, challan against both the accused was filed in the Court. Formal charge was framed against them for offence under Section 18 of the NDPS Act, to which they pleaded not guilty.

2. During the course of prosecution evidence, the prosecution examined six witnesses i.e. Constable Nathu Ram – PW-1, HC Bharat Singh – PW-2, Mela Ram – PW-3, SI Punjab Singh – PW-4, SI Shiv Kumar PW-5 and ASI Kamal Singh – PW-6. The prosecution relied upon several documents also. After conclusion of evidence of prosecution, statements of accused were recorded under Section 313 Cr.P.C. They pleaded innocence and claimed false implication in this case at the instance of Gurdev Singh Sarpanch, on account of party factionalism in the village. They did not lead any evidence in defence despite availing opportunities.

3. After hearing the arguments, the Judge, Special Court, Sirsa, vide judgment dated 13.3.2007, came to the conclusion that the prosecution had been able to prove its charge against accused -

Bhagwan Singh @ Pappu. Consequently, he was convicted. Whereas co-accused Nachhattar Singh was acquitted, giving him benefit of doubt. Vide order dated 14.3.2007, accused convict - Bhagwan Singh @ Pappu was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months.

4. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused-convict had approached this Court by way of filing the present appeal, which was admitted for hearing and recovery of fine was ordered to be stayed vide order dated 18.4.2007. On an application having been filed by the appellant/accused, the remaining sentence of imprisonment of Bhagwan Singh @ Pappu – appellant, was suspended during the pendency of appeal, vide order dated 21.8.2007, observing that out of imprisonment of 2 years awarded to him, he had undergone 6 months of sentence. Now the appeal has come up for final hearing.

5. I have heard Mr. B.S. Saroha, learned counsel for the appellant and Mr. S.S. Pannu, learned Deputy Advocate General, Haryana, besides going through the record.

6. At the very outset, learned counsel for the appellant-accused has stated that he does not challenge the judgment passed by Judge, Special Court, Sirsa, on the point of conviction though he has got submissions to make with regard to quantum of sentence.

7. Learned counsel for the appellant has contended that the

appellant-accused was aged about 30 years at the time of his conviction; he did not have any past criminal record and as per his instructions he has not indulged in any criminal act after being granted bail by this Court; he has further contended that as per the custody certificate placed on file by the learned State counsel today, the appellant – accused has undergone total sentence of 6 months and 13 days, therefore a lenient view in the matter by taken, as regards the quantum of sentence.

8. Whereas learned State counsel has contended that the sentence awarded to the convict is not on higher side and it should not be reduced.

9. However, after considering the rival contentions and going through the record, I find that the accused – convict Bhagwan Singh @ Pappu, was aged about 30 years at the time of his conviction in this case and there is nothing to show that he was involved in any other criminal case earlier. Furthermore, the contraband recovered from him amounts to non-commercial quantity; about more than 15 years have elapsed from the date of his conviction and sentence; he has already undergone a period of 6 months and 13 days of imprisonment in this case. Thus it would be proper and appropriate if the sentence of imprisonment is reduced to the one already undergone by him, in this case, while keeping the fine part as intact. It is ordered accordingly.

10. Let the amount of fine be paid in the Court of CJM, Sirsa, within one month from today otherwise, CJM, Sirsa, would

issue warrants of arrest against the appellant-accused, so as to make him undergo sentence in default of payment of fine.

11. Accordingly, the appeal challenging the impugned judgment stands disposed of upholding the conviction of the appellant-accused, whereas the sentence part is modified as detailed above. Necessary intimation be sent to Chief Judicial Magistrate, Sirsa, for compliance.

22.4.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No