

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

CRA-S-480-SB-2015

Date of Decision : **November 29, 2022**

SUBHASH CHAND AND ANR

.....Appellants

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Arvind Galav, Advocate
Legal Aid Counsel for the appellants.

Mr. Maninder Singh, DAG, Punjab.

KULDEEP TIWARI. J.

The instant appeal has been directed against the judgment of conviction and order of sentence dated 28.11.2014 passed by Special Judge (under the Narcotic Drugs and Psychotropic Substances Act, 1985) (hereinafter referred to as '**the Act**'), Patiala, whereby, the appellants were held guilty for the commission of offence punishable under Section 18 of the Act and sentenced to undergo rigorous imprisonment for six months and a fine of Rs.5,000/- was also imposed. In default of payment of fine, the appellants were ordered to further undergo simple imprisonment for two months.

FACTUAL MATRIX

The prosecution machinery was set rolling by SI Gurcharan Singh. He stated that on 01.06.2012, he along with his police party was

present at Fatehpur Chowk and had laid a special check post, where the accused were apprehended while coming from the side of village Fatehpur on Motor Cycle No. HR-08J/9368 and the contraband in the shape of opium weighing 500 grams was recovered from the motor cycle being driven by accused Subash Chand. After recovery of the opium, two samples each containing 10 grams were taken out from the recovered opium and the same along-with bulk property weighing 480 grams were converted into parcels. The same were sealed with the seal of the investigating officer with impression 'GS'. Sample seal was also prepared and the seal was handed over to ASI Swaran Singh. The case property was taken into police possession. Ruqa was sent to the police station on the basis of which formal FIR No.36 dated 01.06.2012 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act was registered at Police Station, Sanaur. Site plan, arrest memo, personal search memos and report under section 57 of the Act etc. were prepared. The motor cycle was also taken into police possession vide a separate recovery memo. On completion of the investigation at the spot, the case property along with accused persons and witnesses was produced before the SHO Inspector Jagbir Singh, who verified the facts of recovery from the accused and the witnesses and put his counter seal on the aforesaid case property as well as the sample seal bearing impression 'JS'. The case property was deposited with the MHC on the directions of the SHO. On the next day, Inspector Jagbir Singh prepared the inventory report and handed it over to SI Gurcharan Singh, who produced the case property before the ACJM, Patiala who after examining the same, attested the

inventory report and passed an order in this regard and thereafter the case property was re-deposited with the MHC.

The Chemical Examiner's report was also produced before the Court which proved that the recovered contraband was Opium.

TRIAL COURT PROCEEDINGS

The learned trial Court framed charges against both the appellants under Section 18 of the Act, to which, they pleaded not guilty.

In order to prove its case, the prosecution examined as many as 8 witnesses.

The statements of appellants were recorded under Section 313 Cr.P.C. They denied all the allegations and stated that they are innocent and have been falsely involved in the present case. They also examined HC Kulwant Singh in their defence as DW1 and thereafter, closed their defence evidence.

SUBMISSIONS BY COUNSEL FOR THE PARTIES

The Learned Special Court, Patiala after examining the entire evidence led by the prosecution and by the appellants, held both the appellants guilty of the offence punishable under Section 18 of the Act and sentenced them, as mentioned above.

At the very outset, learned counsel for the appellants restricted his arguments to the extent of sentence awarded by the learned trial Court i.e. rigorous imprisonment of six months and a fine of Rs.5,000/-. Learned counsel for the appellants submitted that he is not assailing the findings of conviction and requested for reduction of sentence to the period already undergone by the appellants.

In view of the submissions made by the learned counsel for the appellants, this Court uphold the finding of conviction recorded by the learned trial Court vide judgment dated 28.11.2014.

To support his submissions, learned counsel for the appellants placed reliance upon the judgment of the Hon'ble Supreme Court in **Sk. Sakkar @ Mannan vs. State of West Bengal, 2021(4) SCC 483** wherein the Supreme Court after considering the mitigating circumstances reduced the sentence to the period already undergone. The relevant observations reads as under:

“11. It is manifest from [Section 20\(i\)](#) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs.50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly.”

Learned counsel for the appellant further relied upon the judgment of **Issak Nabab Shah vs. The State of Maharashtra (Crl. Appeal No.828 of 2020)** wherein, the Supreme Court reduced the sentence from 10 to 6 years in case of non-commercial quantity, (quantity between small and commercial quantity) and observed as under:-

“5. Having heard the learned Advocates appearing for the respective parties and in the facts and circumstances of the case, more particularly when the quantity/Ganja recovered from the appellant was 6.300 kilogram, which is between small quantity and commercial quantity and considering the fact that the maximum punishment for such offence is 10 years rigorous imprisonment, out of which the appellant has already undergone six years rigorous imprisonment, we allow the present appeal in part and modify the impugned judgment and order passed by the learned trial Court, confirmed by the High Court, to the extent of imposing the sentence of six years rigorous imprisonment in place of ten years rigorous imprisonment as imposed by the learned trial Court and confirmed by the High Court. Rest of the judgment and order passed by the learned trial Court, confirmed by the High Court, is hereby confirmed.”

Learned counsel for the appellants also placed reliance upon the judgment passed by a co-ordinate Bench of this Court in **Mohinder Singh Vs. State of Punjab CRA-S-1687-2018(O&M) decided on 1.6.2018** wherein, it has been held that if the recovery is of non-commercial quantity and the accused has undergone substantive sentence, he is not a previous convict and not involved in any other case, the sentence can be reduced to the period already undergone by the accused.

In view of the above settled legal proposition as laid down by the Supreme Court, this Court finds merit in the contention of learned counsel for the appellants.

The present case was registered way back in the year 2012.

Both the appellants were apprehended carrying Opium weighing 500 grams which is a non-commercial quantity. At the time of arrest, appellant-Subhash Chand was 33 years old and appellant-Rajiv Kumar was 23 years old. The custody certificates reveal that appellant-Subhash Chand has undergone substantive sentence imposed upon him i.e. 4 months and seventeen days whereas appellant-Rajiv Kumar has undergone substantive sentence imposed upon him i.e. four months and twenty four days out of six months RI.

Learned counsel for the appellants submitted that appellant-Subhash Chand is married and is an agriculturist and has two minor children and his parents are old aged persons, who are dependent upon him. It was further submitted by learned counsel for the appellants that appellant-Rajiv Kumar was unmarried when he was arrested by the police and now he must have been married and settled in the society after coming out of jail.

Per contra, the learned State counsel unable to dispute the factual submission and custody period of both the appellants, however, he supported the impugned judgment of conviction and order of sentence. He further stated that the learned trial Court has adequately awarded the sentence, therefore, does not require any interference.

REASONS

A perusal of custody certificates placed on record by the learned State counsel reveal that appellant-Subhash Chand has undergone substantive sentence imposed upon him i.e. 4 months and seventeen days whereas appellant-Rajiv Kumar has undergone substantive sentence

imposed upon him i.e. four months and twenty four days out of six months awarded by the learned trial Court. Both the appellants are not involved in any other case. They have also not misused the concession of bail granted by this Court. It seems that the appellants have mended their ways of life and joined the mainstream of society. No useful purpose will be served either for the society or for the appellants by sending them to prison again. Considering the age of accused, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime viz-a-viz re-formative approach of punishment, this Court deems it appropriate to reduce the period of sentence of both the appellants to the period already undergone.

CONCLUSION

In view of the legal proposition settled by the Supreme Court, considering the age of the accused, aggravating and mitigating circumstances discussed above, the appeal is partly allowed. The impugned judgment of conviction dated 28.11.2014 is upheld. However, the sentence imposed upon both the appellants is reduced to the period already undergone. The sentence of fine is ordered to remain intact.

(KULDEEP TIWARI)
JUDGE

November 29, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No