

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

956

(1) CRA-D-43-DB-2012 (O&M)
Date of Decision: 28.03.2023

Manjit SinghAppellant

Versus

State of PunjabRespondent

(2) CRA-D-208-DB-2012 (O&M)
Date of Decision: 28.03.2023

RajuAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Aditya Sanghi, Advocate
for the appellant in CRA-D-43-DB-2012.

Mr. Pradeep Panwar, Advocate
for the appellant in CRA-D-208-DB-2012.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

Lalit Batra, J.

Both the above said appeals are being heard and decided by the
common judgment being arisen out of the same judgment.

2. Present appeals are directed against the judgment of conviction
and order of sentence both dated 04.11.2011, passed by Judge, Special Court,

Patiala, whereby appellants namely Manjit Singh and Raju were convicted and sentenced as under:-

Offence under Section	Sentence awarded	Fine	Sentence in default of payment of fine
20 of NDPS Act	Rigorous Imprisonment for fourteen years each	₹ 1,50,000/- each	Rigorous Imprisonment for one year and six months each.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Trial Court completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and statements of accused as envisaged under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, learned trial Court held the appellants guilty and convicted them for commission of offence and sentenced them vide judgment of conviction and order of sentence both 04.11.2011 as mentioned in para No.2 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeals.

6. Learned counsel for the appellants submit that appellants do not want to assail the judgment of conviction dated 04.11.2011, in terms of which, they were convicted for the commission of offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). They further submit that the quantity of contraband recovered from the appellants cannot be termed to be huge one as both of

them were apprehended while having conscious possession of contraband (*Charas*) weighing 01 kilogram and 800 grams each i.e. (total 03 kilograms and 600 grams). They further submit that both appellants namely Manjit Singh and Raju were sentenced on the higher side without taking into consideration the relevant factors which are required to be taken into account while imposing punishment higher than the minimum term of imprisonment or amount of fine.

7. Learned counsel for the appellants further submit that in terms of Section 20 (b) (ii) (C) of the Act, in matter pertaining to commercial quantity, the minimum sentence is rigorous imprisonment for a term of not less than 10 years and which may extend to 20 years and shall also be liable to pay fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. They further submit that as per Section 32B of the Act, certain factors are required to be taken into account for imposing punishment higher than the minimum term of imprisonment or amount of fine, is as under:

“32B. Factors to be taken into account for imposing higher than the minimum punishment. -- Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors of imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--

- (a) the use or threat of use of violence or arms by the offender;*
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;*

- (c) *the fact that the minors are affected by the offence or the minors are used for the commission of an offence;*
- (d) *the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;*
- (e) *the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offence; and*
- (f) *the fact that the offender is involved in other illegal activities facilitated by commission of the offence.*

8. Learned counsel for the appellants further submit that a bare perusal of order on quantum of sentence dated 04.11.2011 reveals that learned Trial Court while imposing punishment higher than the minimum term of imprisonment and amount of fine under Section 20 (b) (ii) (C) of the Act, did not take into account the relevant factors as envisaged under Section 32B of the Act and as such appellants remained devoid of material aspects which were required to be considered. They further urge that appellant Manjeet Singh has already undergone actual sentence of ten (10) years, seven (07) months and twelve (12) days till date and as such he has already undergone more than minimum sentence provided for the offence in question. Further, it has been pointed out that appellant Raju has already undergone actual sentence of ten (10) years, one (01) month and nineteen (19) days till date which is also more than the minimum sentence provided for the offence in question. They further submit that sentence of imposition of fine is also on the higher side.

9. Learned State counsel contended that the appellants do not deserve any concession and both the appeals may be dismissed.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the learned Trial Court has already appreciated the entire evidence available on record, in its right perspective and no interference is called for in the judgment of conviction recorded against appellants. As such, both the appeals, qua judgment of conviction passed by the learned Trial Court, stand dismissed.

11. As regard quantum of sentence, learned Trial Court did not consider the relevant factors as envisaged under Section 32B of the Act, while imposing higher than the minimum punishment. Appellant Manjeet Singh has already undergone actual sentence of ten (10) years, seven (07) months and twelve (12) days and further, appellant Raju has already undergone actual sentence of ten (10) years, one (01) month and nineteen (19) days, thus, taking a lenient view on the quantum of sentence, the order of sentence dated 04.11.2011 passed by Judge, Special Court, Patiala, is modified to the extent that the substantive sentence of appellants namely Manjeet Singh and Raju in this case is reduced from fourteen years under Section 20 of the Act to the period already undergone by them in this case.

12. As regard sentence of payment of fine, this Court is also inclined to take a lenient view. Accordingly, the order of sentence dated 04.11.2011 is also modified to the extent that the sentence with regard to payment of fine imposed upon the appellants is reduced from ₹ 1,50,000/- each to ₹ 1,00,000/- each. In default of payment of fine, appellants are sentenced to undergo rigorous imprisonment for a period of three months each.

13. Appellants namely Manjeet Singh and Raju be released from custody in this case after undergoing the modified sentence in Para No.12 above, if not required in any other case.

14. As a sequel to above, subject to modification in sentence, as detailed above, both the appeals are disposed of accordingly.

(HARINDER SINGH SIDHU)
JUDGE

(LALIT BATRA)
JUDGE

28.03.2023

Varinder Prashad

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