

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

518

CRA-S-1001-SB-2005 (O&M)**Date of Decision: 26.05.2023**

Punnu Ram

...Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Siddharth Gupta, Advocate
for the applicant/appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.**CRM 19853 of 2023**

1. The legal representatives of Punnu Ram (since deceased), appellant have filed the present application under Section 5 of the Limitation Act for condonation of delay of 2206 days in filing the application under Section 394 (2) Cr.P.C. The learned counsel for the applicant submits that in the main appeal, Punnu Ram, appellant had expired on 31.03.2015 and the death certificate in this regard has been appended as Annexure A-1. As per him, Punnu Ram, appellant had left behind three legal heirs, i.e. Phoola Devi, widow, Gurpreet Singh, son and Mango Bai, daughter and they were the only Class-1 legal heirs left behind by the deceased/appellant. Learned counsel further submits that the legal representatives of Punnu Ram, appellant were not aware about the details of aforesaid main appeal filed by the appellant. After receiving the notices from this Court, they contacted an Advocate and came to know about the pendency of the present

appeal before this Court. Thus, the delay in filing the present application is unintentional and bonafide.

2. Notice of motion.

3. On the asking of the Court Ms. Sheenu Sura, DAG, Haryana accepts notice on behalf of the State of Haryana.

4. I have heard learned counsel for the parties and for the reasons mentioned in the application, the same is allowed and the delay of 2206 days in filing the application under Section 394(2) Cr.P.C. is ordered to be condoned.

CRM-19858 of 2023

1. The applicants have filed the present application under Section 394(2) Cr.P.C. seeking leave to continue the aforesaid appeal and to place on record the memo of parties.

2. For the reasons mentioned in the application, the same is allowed and Phoola Devi wife of Punnu Ram, (appellant) since deceased is allowed to contest the main appeal.

3. Amended memo of parties is taken on record.

CRA S-1001-SB of 2005

1. The present appeal has been preferred against the judgment of conviction dated 07.03.2005 and order of sentence dated 09.03.2005 passed by the Court of learned Additional Sessions Judge, Fatehabad, whereby, the appellant was convicted under Section 15 of Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, '**the NDPS Act**') and was sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.20,000/- alongwith default stipulation.

2. The brief prosecution story, as it emerges from the report under Section 173 Cr.P.C., is that on 03.07.2002, a police party headed by ASI Ramesh Kumar was present at Bhakhra Canal Bridge, Dhand, in connection with patrolling in the area. In the meantime, one scooter bearing registration No. HR-23-5009 was seen coming from the opposite side and was signalled to stop. However, the person driving the scooter tried to run away and was apprehended on suspicion. He was given the option to get him searched as per the mandatory requirements of Section 50 of the NDPS Act but he reposed confidence in the police and on his search, he was found to be carrying 20 Kgs of poppy husk. The case property was taken into possession by the police and initial investigation was conducted. The appellant was formally arrested and was taken to SHO Vijay Kumar, who verified the facts from the accused and the witnesses and had sealed the case property.

3. To prove the charge, the prosecution had examined eight witnesses.

4. The prosecution examined PW1 HC Om Parkash who tendered his affidavit Ex.P-1 in evidence. Similarly, PW2 Constable Chanan Ram tendered his affidavit Ex.P-2 in his evidence. The prosecution further examined PW3 Constable Dalip Singh, who was part of the raiding team and supported the case of the prosecution as narrated in the FIR. Similarly, PW4 Inspector Hoshiar Singh had prepared the report under Section 173 Cr.P.C. and had produced the challan after completion of the investigation. The prosecution further examined PW5 SI Bhagwan Dass, who had registered the formal FIR

Ex.P-9 after receipt of the *rukka* from the police team. The prosecution further examined PW6 SI Ramesh Kumar, who was the star witness of the prosecution. He also supported the case of the prosecution with regard to the search and seizure conducted by the police. PW7 Inspector Vijay Kumar was working as SHO in Police Station Sadar Fetehabad on 03.07.2002. He verified the facts from the accused, witnesses and affixed his seal “VK” on all the parcels. The prosecution examined PW8 Constable Shri Ram, who was posted in Police Station Sadar Fatehabad on 11.07.2002 and tendered his affidavit Ex.P-15 in evidence.

5. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C., and he pleaded his false implication. He stated that nothing was recovered from him. The appellant did not lead any defence evidence.

6. I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

7. The learned counsel for the appellant/legal heirs of the appellant vehemently argued that the instant case hinges around the testimonies of the official witnesses produced by the prosecution and there was no independent corroboration to the prosecution case. The provisions of the NDPS Act are stringent in nature and to lend credence to the case of the prosecution, prosecution was obliged to examine private witnesses, who were easily available at the time of the seizure of the contraband from the present appellant. Learned State counsel vehemently opposed the said submission by contending that the prosecution had examined eight witnesses, who were

subjected to cross-examination and they had no enmity with the appellant nor they had any reason to falsely involve him in such a case.

8. I have considered the rival submissions and find no substance in the arguments made by the learned counsel for the appellant. In fact, the testimonies of official witnesses cannot be doubted or discarded only on the ground that he happened to be an official witness. No doubt, as a rule of caution, Courts always look for independent corroboration, however, if the testimonies of official witnesses inspires confidence, the Court can always place reliance on the same. Still further, the joining the independent witness always depend on several factors and it is also a matter of common knowledge that normally in a case under the NDPS Act independent witnesses are reluctant to appear as witnesses. In the present case, the prosecution had examined official witnesses, who had no enmity with the present appellant. Even, in his statement, the accused had not suggested even a single reason for falsely involving him in a criminal case. Consequently, the said contention raised by the learned counsel for the appellant/legal heirs of the appellant is repelled.

9. The learned counsel for the appellant/legal heirs of the appellant further argued that in the present case, the appellant was liable to be acquitted in absence of link evidence. The said contention was dealt with by the learned trial Court in detail and had recorded valid reason for discarding the said submission made on behalf of the present appellant. In the present case, the sample was delivered at the FSL by Constable Shri Ram on 11.07.2002. Initially, the sample was

sent on 09.07.2002, however, the officials of the FSL had raised certain objections and the sample was returned. However, it was re-deposited with the FSL on 11.07.2002 after removal of the objections. Apart from that, the prosecution had examined PW1 HC Om Parkash, who was posted as MHC in the Police Station Sadar Fatehabad and had supported the case of the prosecution. Similarly, PW2 Constable Chanan Ram also tendered his affidavit as Ex.P-2 and had supported the case of the prosecution in this regard. PW2 Constable Chanan Ram had taken the sample on 09.07.2009 to FSL and FSL raised certain objections, so he deposited each bag with the MHC on the same day. PW1 HC Om Parkash and PW2 Constable Chanan Ram clearly stated that the sample was not tampered with so long as it remained with them. Similarly, their testimonies are duly supported by PW8 Shri Ram who stated that he took the sample to FSL on 11.07.2002 and there was no tampering with the sample, so long as it remained with him. No other submission was raised in this regard.

10. Even otherwise, I have carefully gone through the impugned judgment passed by the learned trial Court. The learned counsel appearing on behalf of the appellant/legal heirs of the appellant has failed to point out any other illegality or perversity in the impugned judgment passed by the Court of learned Additional Sessions Judge, Fatehabad and the appeal is without any merit and is liable to be dismissed.

11. As a consequence, the judgment of conviction dated 07.03.2005 passed by the Court of learned Additional Sessions Judge, Fatehabad, is ordered to be upheld.

12. In the present case, the appellant had died on 31.03.2015, during the pendency of the present appeal. Today, the application under Section 394(2) Cr.P.C. moved by the legal representatives of the appellant has been allowed and Phoolo Devi, his widow has been allowed to contest the present appeal and detailed submissions have been made by the learned counsel representing her before this Court. A perusal of the order of sentence shows that the appellant was punished with a composite sentence of imprisonment and fine. Since, the appellant has expired, the appeal would abate as regards the sentence of imprisonment. However, the judgment of conviction and sentence of fine would remain as it is and appeal would not abate as regards the sentence of fine. Consequently, the amount of fine of Rs. 20,000/- can be very well recovered only from the assets of the appellant, which have been inherited by the legal heirs of the appellant.

13. In view of the above modifications, the appeal is disposed off.

14. All pending applications, if any, are disposed off, accordingly.

15. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

16. Records of the Court below be sent back.

26.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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