

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.541

CRA-S-1192-SB-2005 (O&M)

Reserved on:19.04.2023

Pronounced on:21.04.2023

Pritpal Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. Ravnit Singh Sidhu, Advocate,
for the appellant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 07.07.2005 passed by the learned Special Court, Sangrur, whereby the accused-appellant was convicted for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- with a default stipulation.

2. The prosecution story, as it emanates from the report under Section 173 Cr.P.C. is that on 27.04.2004, a police team headed by Jaswinder Singh, Inspector, was present in the official vehicle near the canal, falling in the area of village Kaheru, towards village Jahangir. At about 12' O clock, a person was seen coming from the opposite side and

was carrying a plastic envelope in his right hand, which was containing a

box. He noticed the police party and tried to turn back swiftly. However, he was apprehended by the police team on suspicion and on enquiry, he disclosed his name and address as Pritpal Singh son of Harbans Singh, resident of village Bamel, Police Station, Dhuri. Inspector Jaswinder Singh disclosed his identity and raised a suspicion that Pritpal Singh, accused-appellant, was carrying some intoxicant in the box and the search was to be made. He also gave him an offer that in case, he desired, some gazetted officer or a Magistrate could be called at the spot and the accused-appellant opted to get his search conducted from some gazetted officer. A memo was prepared in this regard, which was thumb marked by the accused and attested by the witnesses. A wireless message was flashed and Paramjit Singh Goraya, DSP (D), Sangur, reached at the spot with his staff in an official vehicle and again informed Pritpal Singh that there was suspicion of some contraband and he could get his search conducted from some gazetted officer or a Magistrate. The accused disclosed that he had faith in him and a consent memo was recorded, which was also thumb marked by him and attested by the police officials. The search was conducted and the box was found to be containing opium in liquid form and the same weighed to be 1 kg. Two samples of 10 grams each were taken out separately and put in two very small plastic boxes and the two parcels were prepared separately. The remaining quantity of the opium weighed to be 980 grams and three separate parcels, i.e. one of residue and two of samples, were prepared and were duly sealed with the seal bearing inscription 'JS' and also with the seal bearing inscription 'PS' of DSP. The sample seals were prepared separately.

All the articles were taken into possession by the police vide recovery

memo and the accused was ordered to be arrested. A formal ruqa was sent to the police station and on the basis of the same, a formal FIR was registered against the accused-appellant. The report of the Chemical Examiner was obtained and as per the same, opium was found in the box. After completing the investigation, the challan was presented.

3. Finding a prima facie case, the accused-appellant was ordered to be charge sheeted under Section 18 of the Act, to which he pleaded not guilty and claimed to be tried by the learned trial Court.

4. At the very outset, learned counsel for the appellant submitted that he did not press the instant appeal on merits, but prayed for showing leniency in the matter of awarding the sentence. Learned counsel submitted that the appellant was facing the agony of trial/appeal for the last about 19 years and had undergone a substantial period i.e. 01 year and 04 months out of total sentence of 2 years. Even he was aged about 45 years, at the time of recording of his statement under Section 313 Cr.P.C., i.e., on 20.04.2005 and at present, he is aged about 63 years and is a senior citizen. Thus, the said factors may be considered by this Court, while awarding the sentence to the present appellant. However, this Court has examined the appeal on merits as well and there was sufficient incriminating evidence against the present appellant.

5. Learned counsel for the State has submitted that the appellant is involved in a case under the NDPS Act and thus, did not deserve any leniency and the present appeal deserves to be dismissed.

6. I have heard learned counsel for the parties and perused the case file minutely.

7.

Before advertng to the merits of the case and the findings

recorded by the learned trial Court, it would be appropriate to mention a brief account of the evidence led by the prosecution. The prosecution examined PW-1 SI Mangal Singh, who was posted as SHO at Police Station Dhuri on 27.04.2004 and on that day, Inspector Jaswinder Singh and the police team produced before him two sample parcels containing 10 grams of opium each and one bulk parcel containing 980 grams of opium, which were duly sealed. He verified the facts and had also put his seal on all the three parcels. On his directions, the case property was deposited with the MHC of the Police Station. He had completed the investigation and presented the final report of the investigation. Similarly, the prosecution examined PW-2 C-II Darshan Singh, who tendered his affidavit Ex.PB into evidence. The prosecution further examined Paramjit Singh Goraya, DSP (D), Sangrur as PW-3, who was called at the spot as a gazetted officer and the search and seizure procedure was conducted in his presence. The prosecution further examined ASI Gurmail Singh as PW-4, who produced the sealed parcels of sample as well as residue quantity of opium before the learned Illaqa Magistrate and after producing the same before the learned Magistrate, it was deposited with MHC Nirmal Singh. The prosecution further examined PW-5 HC Nirmal Singh, who tendered his affidavit Ex.PE into the evidence. SI Jasmail Singh was examined as PW-6, who was part of the police team, which had apprehended the appellant at the place of occurrence. Apart from that, the prosecution also examined Inspector Jaswinder Singh as PW-7, who was heading the police team and he supported the version of the prosecution, as mentioned in the FIR in the present case.

8. After the closure of the prosecution evidence, the statement of

the accused-appellant was recorded under Section 313 Cr.P.C. and he claimed innocence. He stated that nothing was recovered from him and he was brought from his house at village Bamal at the instance of Surjit Dass son of Mahant. The police had relation with said Surjit Singh, who was inimical towards him. To prove his defence, the accused examined DW-1 Karnail Singh, who was working as a Draftsman and had prepared the site plan Ex.D1 after reaching and inspecting the spot. Mukand Singh, co-villager of the appellant, was examined as DW-2, who stated that the police searched the house of the accused and nothing was recovered from him. Pritpal Singh, appellant, was taken away by the police and on next day, they came to know that a case under Section 18 of the NDPS Act was registered against him. The defence further examined DW-3 Jora Singh, a co-villager of the present appellant. The said witness stated that the present appellant was picked from his home and the police had told them that Pritpal would be allowed to go home after making some enquiries from him. Later, they came to know that Pritpal had been arrested in a case under the NDPS Act.

9. In the instant case, the police team headed by PW-7 Inspector Jaswinder Singh was present for patrolling and was going towards Kaharu. They noticed the presence of present appellant and on seeing the police party, he tried to run away from the spot. However, on suspicion, he was apprehended after following the due process of law. Even he was offered that he could get his search conducted either in the presence of a gazetted officer or a Magistrate, but he opted to get his search conducted in the presence of a gazetted officer and his statement was recorded in this regard.

His search was conducted in the presence of PW-3 Paramjit Singh Goraya,

DSP (D), Sangrur. On his search, 1 kg of opium was recovered and two samples of 10 gram each were separated from the total quantity of the contraband. The samples were sent to the FSL and as per their report of the Chemical Examiner Ex.PA, opium was found in the samples after analysis. The prosecution had examined seven witnesses and the said witnesses were cross-examined at length. However, the testimonies of the said official witnesses could not be shattered in any manner. Even the accused-appellant had examined three witnesses, but their testimonies did not advance the case of the appellant in any manner. The accused-appellant examined DW-1 Karnail Singh, who had prepared the site plan Ex.D1. However, in cross-examination, he admitted that he was called by the relative of the accused-appellant to visit the spot for preparing the site plan and there was no authenticity attached to such a site plan prepared by a private person. Apart from that, the defence examined DW-2 Mukand Singh and DW-3 Jora Singh, co-villagers of the present appellant. It is a matter of common experience that the co-villagers try to help such accused, who belong to their village. Even none of them had made any representation to any higher officer regarding false implication of the present appellant. Further, no resolution was passed by village panchayat regarding planting of the false case against the accused-appellant. Even DW-2 and DW-3 admitted that no applications were moved to the higher police officers regarding the false implication of the present appellant by the police. Thus, the testimonies of such witnesses, who were apparently interested and having close relations with the accused, cannot be relied upon by this Court.

10. Even otherwise, I have carefully gone through the findings

recorded by the learned trial Court and find no reason to deviate from the well reasoned findings recorded by the learned trial Court and the impugned judgment of conviction is upheld. However, this Court is cognizant of the fact that the contraband was recovered from the present appellant on 27.04.2004 and he has faced the agony of trial/appeal for the last about 19 years. The sentence imposed on the present appellant was ordered to be suspended on 22.08.2005 and he is on bail for the last about 18 years. The custody certificate has been filed in the Court by the learned State Counsel and as per the same, the appellant had undergone 1 year and 4 months of actual sentence out of total sentence of 2 years, awarded by the learned trial Court. Apart from that, as per the statement under Section 313 Cr.P.C., the appellant was aged about 45 years as on 20.04.2005 and at present he is aged about 63 years and is a senior citizen. Still further. the appellant is a first offender and no other criminal case was ever registered against him. Consequently, the ends of justice would be suitably met, if his substantive sentence is reduced to the one already undergone by him.

11. In view of the above discussion, the impugned judgment of conviction dated 07.07.2005 passed by the learned Special Court, Sangrur, is upheld. However, the order of sentence is modified to the extent that the substantive sentence of imprisonment awarded by the learned trial Court is reduced to the period already undergone by the appellant. Further, the amount of fine is enhanced from Rs.1,000/- to Rs.30,000/- which shall be deposited by the appellant with Punjab and Haryana High Court Bar Association Lawyers' Family Welfare Fund within a period of 03 months; failing which, the appellant shall undergo rigorous imprisonment for a period of 03 months as observed by the learned trial Court in its order of

sentence dated 07.07.2005.

12. With the above modification, the present appeal stands partly allowed in the above terms. Pending application(s), if any, shall also stand disposed of.

13. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

21.04.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO