

CRA-S-34-SB-2005

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-34-SB-2005
Date of Decision: April 28, 2023

Raj Pal

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Arav Gupta, Advocate (*Amicus Curiae*),
for the appellant.

Mr. Pawan Kumar Jhanda, AAG, Haryana,
for the respondent – State.

SANJAY VASHISTH, J.

1. Appellant – Raj Pal, aged about 25 years (at the time of conviction), has filed the present appeal challenging judgment of conviction and order of sentence dated 03.12.2004, passed by learned Additional Sessions Judge, Jagadhri, in Sessions Case No. 81, dated 12.05.2003, arising from FIR No. 132, dated 28.04.2003, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), registered at Police Station Farakpur, District Yamunanagar.

2. As per prosecution version, on 28.04.2003, appellant – Raj Pal was apprehended by a police party headed by ASI Yash Pal, when he was going towards ITI Chowk, Yamunanagar, with a bag in his hand, with suspicion that he was carrying some contraband in his possession.

Upon service of notice under Section 50 of the NDPS Act, with regard to option of search by a Magistrate or Gazetted Officer, appellant opted to be searched by a Gazetted Officer. Accordingly, he was taken to the office of Bijender Singh, DSP, Jagadhri, in whose presence search of the bag was carried out by ASI Yash Pal, and 8 Kgs. of *Choorapost* (poppy husk) was recovered. After completing the requisite formalities, such as separation of samples, preparation of parcels of samples and residue contraband, and affixing seals on parcels etc., formal FIR (Ex. PC) was registered. After completing formalities and investigation etc., appellant – Raj Pal was put to trial. He was charged for the offence punishable under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

3. Learned Trial Court held the appellant guilty of the offence, vide judgment of conviction dated 03.12.2004 and vide order of sentence dated 03.12.2004, he was sentenced as under:-

Under Section	Sentence	Fine	In Default
15 of the NDPS Act	8 months RI	Rs. 1,000/-	1 month RI

4. Appeal was admitted on 06.01.2005, and after noticing the factum of recovery of non-commercial quantity of 8 Kgs. of poppy husk from the appellant; total undergone period inside jail against the substantive sentence of 8 months; and fine of Rs.1,000/-, remaining sentence of the appellant was suspended during pendency of the appeal, by this Court.

5. At the final hearing of the appeal today, learned counsel for the appellant submits that he does not want to challenge the judgment of conviction dated 03.12.2004, passed by learned Additional Sessions Judge, Jagadhri. However, on the question of quantum of sentence, learned counsel for the appellant submits that at the time of conviction, appellant was aged about 25 years and by now he has attained the age of more than 44 years; he is the sole bread earner for his family; and that appellant is facing agony of criminal prosecution for the last 19 years, therefore, taking a lenient view, remaining substantive sentence of imprisonment of the appellant may be reduced to the period already undergone by him in jail.

5(i). Learned counsel for the appellant further submits that the concept of reformatory theory in context to any wrong doer is well established by now in criminal jurisprudence, through a catena of judgments passed from time to time by Hon'ble the Supreme Court as well as by this Court. In this regard, learned counsel for the appellant has referred to and placed reliance on following judgments:-

1. Mohammad Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287;
2. Satish @ Sabbe v. State of Uttar Pradesh (Special Leave Petition (Crl.) No. 7369 of 2019, decided on 30.09.2020 : Law Finder Doc ID # 1746022);
3. Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644;
4. Haribhau v. State of Maharashtra, (2018) 18 SCC 43;

5. Naresh Kumar v. State of Haryana (CRA-S-796-SB-2005, decided on 24.02.2023);
6. Lakhwinder Kumar v. State of Punjab (CRA-S-660-SB-2005, decided on 03.03.2023); and
7. Santokh Singh v. State of Punjab (CRA-S-2254-SB-2004, decided on 11.04.2023).

6. On the other hand, Mr. Pawan Kumar Jhanda, learned Assistant Advocate General, Haryana, while opposing the submissions addressed by learned counsel for the appellant, submits that prayer of the appellant should not be accepted because he was involved in a serious case, offence of which is a crime against society. Learned State counsel also furnished custody certificate dated 25.03.2023, today in the Court, which is taken on record. Registry is directed to tag the same at an appropriate place of the paper book. As per custody certificate dated 25.03.2023, appellant has undergone 01 month & 22 days actual incarceration, out of total substantive sentence of eight months, which was ordered by learned Trial Court.

6(i). Learned State counsel also points out that as per custody certificate dated 25.03.2023, another FIR No. 22, dated 03.02.2004, under Section 15 of the NDPS Act, was registered against the appellant at Police Station Farakpur, District Yamunanagar. In the said case, after trial, learned Trial Court convicted the appellant, vide judgment of conviction dated 03.12.2004, and vide order of sentence dated 03.12.2004, awarded substantive sentence of six months rigorous imprisonment and to pay fine of Rs.1,000/-, and in default of payment of

fine, to further undergo rigorous imprisonment for one month.

6(ii). However, in all fairness, learned State counsel admits that after conviction and sentence of the appellant in both the cases by the Trial Court, vide judgments of conviction and orders of sentence dated 03.12.2004, and release of the appellant on bail, subsequently no other case either under the NDPS Act or any other offence has been registered against him.

7. I have heard learned counsel for the parties and with their able assistance gone through the record.

8. Since learned counsel for the appellant has chosen not to assail the judgment of conviction passed by learned Trial Court, **I find no infirmity in the impugned judgment of conviction, dated 03.12.2004, passed by learned Trial Court and the same stands affirmed. Consequently, present appeal qua conviction of the appellant is dismissed.**

9. On the question of sentence of the appellant, this Court has examined the submissions addressed by learned counsel from both the sides.

10. FIR against the appellant in the present case was registered on 28.04.2003, for the offence punishable under Section 15 of the NDPS Act, upon recovery of non-commercial quantity of 8 Kgs. of poppy husk. As per custody certificate dated 25.03.2023, and as pointed out by learned State counsel, prior to registration of FIR in present appeal,

another case FIR No. 22, dated 03.02.2004, under Section 15 of the NDPS Act, was registered against the appellant at same Police Station Farakpur, District Yamunanagar. In that case also, the appellant has been convicted for the offence punishable under Section 15 of the NDPS Act; sentenced to undergo six months rigorous imprisonment; to pay fine of Rs.1,000/-; and in default of payment of fine, to further undergo rigorous imprisonment for one month, vide separate judgment of conviction and order of sentence dated 03.12.2004.

11. It is not out of place to mention here that the said judgment of conviction and order of sentence dated 03.12.2004, passed by learned Trial Court in Sessions Case No. 7, dated 20.02.2004, is subject matter of challenge before this Court in Criminal Appeal No. 68-SB of 2005, which is also listed today before this Court and decided separately. As per custody certificate dated 16.03.2023, available on record of said appeal, the appellant – Raj Pal has undergone actual sentence of 20 days in case FIR No. 22 dated 03.02.2004.

12. Be that as it may. The appellant – Raj Pal is on bail since the year 2005, in both the aforementioned cases. Thereafter appellant was never found indulged in any similar activity, which shows that with the passage of time, he has adopted the principles of reformatory theory, which otherwise also sends a direct message to reform oneself despite facing conviction in a criminal case(s). For coming to this conclusion, I draw support from the judgment of His Lordship V.R. Krishna Iyer, J., of

Hon'ble Apex Court, rendered in case of **Mohammad Giasuddin (supra)**, wherein in para No. 5 it has been observed as under:-

“5. If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.” (emphasis added)

13. In the case of **Satish @ Sabbe (supra)**, His Lordship Surya Kant, J., says as:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.” (emphasis added)

14. This Court also can not ignore the observation made by their Lordships' of Hon'ble Apex Court in the case of **Sandeep Kumar (supra)**, which says:-

“9. The modern approach should be to reform a person instead of branding him as a criminal all his life”.

15. In the case of **Haribhau (supra)**, Hon'ble Apex Court made observation in the case of an appeal which was preferred against an order of reduction of sentence 'as already undergone'. Para 13 of the said judgment says as under:-

“13. In our considered opinion, firstly, taking into account that the appellant has already undergone one month’s jail sentence out of three months awarded to him, secondly, the fact that the incident in question is quite old and seems to have occurred at the spur of the moment, thirdly, the appellant has no criminal antecedent in his past life and lastly, he is not required in any other criminal case except the one in question which the appellant fairly did not deny having committed and rightly did not challenge his conviction, it is considered to be just and proper to alter the jail sentence awarded to the appellant from three months to the extent of period of one month which was already undergone by him and instead enhance the total fine amount awarded under different sections from Rs. 800 to Rs. 15,000/-”

16. Applying the principles noticed at different stages by the Hon’ble Apex Court, I find that recovery of 8 Kgs. of poppy husk in present case, was effected on 28.04.2003, i.e. about 20 years back; at the time of conviction, appellant was of the age of about 25 years; after release of the appellant from jail in the year 2005, when he was bailed out, no other case has been registered against him; had he been addicted himself or in the business of narcotic drugs, chance of involvement after release on bail could be on higher side; never any involvement in any criminal activity during last about 18 years shows that appellant has reformed himself and rehabilitated in the society; and that not sending the appellant again behind the bars, because of not repeating such offence again, may set an example for others also to get inspired of not involving themselves again in the field of narcotic drugs.

17. Therefore, taking into consideration totality of circumstances, this Court is of the view that ends of justice would be best

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met, if the substantive sentence of imprisonment of the appellant is reduced to that already undergone by him.

18. Resultantly, conviction of the appellant under Section 15 of the NDPS Act is maintained and his substantive sentence of imprisonment is reduced to that already undergone by him. However, remaining part of sentence, i.e. payment of fine of Rs. 1,000/- shall remain intact.

19. With the above modification in the order of sentence dated 03.12.2004, passed by learned Additional Sessions Judge, Jagadhri, present **appeal stands disposed of.**

20. Registry is directed to send back original lower court record alongwith a copy of this judgment to learned Trial Court, for taking further steps with regard to the recovery of fine, if already not paid, in accordance with law.

(SANJAY VASHISTH)
JUDGE

April 28, 2023
Pkapoor

Whether Speaking/Reasoned: YES/~~NO~~
Whether Reportable: YES/~~NO~~