

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

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**CRA-S-98-SB-2005 (O&M)
Reserved on: 17.01.2023
Date of Decision: 18.01.2023**

Chhinder Singh		...Appellant
	Versus	
State of Haryana		... Respondent

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

Present : Mr. D.N. Ganeriwala, Advocate
for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction 04.12.2004 and order of sentence dated 07.12.2004 passed by the learned Sessions Judge, Sirsa, whereby, the present appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as '**the NDPS Act**') and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- alongwith default stipulation.

The brief facts of the present case are that on 20.05.2002, ASI Gopi Chand alongwith other police officials was present on patrolling duty and in the meantime Iqbal Singh met the police party at Bus Stand Hassu by chance and was also associated in the police party. When they reached near village Naurang, Chhinder Singh, accused was found sitting on a gunny bag. The police party got suspicious that he was carrying some contraband in the gunny bag and on this ASI Gopi Chand served a notice Ex.PE to the accused and

informed him of his right of getting his search conducted in the presence of a gazetted officer or a Magistrate. However, the accused vide his reply Ex.PE/1 declined the said offer and reposed confidence in ASI Gopi Chand. A separate memo was prepared, which was thumb marked by the accused and was signed by the witnesses. ASI Gopi Chand conducted the search of the gunny bag, which was found to contain chura post (poppy husk). Two samples, each of 100 gms, were separated from the said quantity and the remaining chura post was found to be 40 kgs 800 gms alongwith weight of gunny bag. The remaining quantity of chura post was again kept in the same gunny bag and both the samples as well as residue chura post were separately sealed into separate parcels with the seal GC and were taken into possession vide separate recovery memo and the same was attested by the witnesses. The seal after used was handed over to HC Halraj Singh. A ruka was sent to the police station by ASI Gopi Chand for registration of the FIR and the formal FIR Ex.PD/1 was registered. The rough site plan was also prepared. After investigation, a report under Section 57 of the NDPS Act was prepared and the accused, witnesses and the entire case property were produced by ASI Gopi Chand before SI/SHO Hawa Singh at Police Station Kalanwali and the SHO verified the facts from the accused and witnesses and had put his seal 'HS' on the sample parcels as well as residue parcels and directed ASI Gopi Chand to deposit the case property with MHC. The SHO also made an endorsement on the report under Section 57 of the NDPS Act. The sample was sent to FSL and it was found that the

same was containing poppy straw (chura post). After completion of necessary investigation, the report under Section 173 Cr.P.C., was presented in the Court.

Finding a prima facie case, the accused was charge sheeted under Section 15 of the NDPS Act, to which, the accused pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined 6 witnesses.

PW1 Jangir Singh tendered his affidavit Ex.PA in evidence and his evidence is formal in nature. PW2 Constable Suresh Kumar submitted his affidavit Ex.PB in his evidence. The prosecution examined PW3 SI Hawa Singh, who was posted as SI/SHO on 20.05.2002 in Police Station Kalanwali and on that day, ASI Gopi Chand had produced before him accused Chhinder Singh, witnesses and the case property. He had verified the facts from the accused, witnesses and had put his seal 'HS' on the sample parcels, residue parcel, sample seal and directed ASI Gopi Chand to deposit the same with MHC with seals intact. ASI Gopi Chand prepared and produced the report under Section 57 of the NDPS Act before him, on which, he made his endorsement and sent the same to the higher police officers. He had also prepared the report under Section 173 Cr.P.C. PW4 ASI Sheo Chand had recorded the formal FIR Ex.PD/1 on receipt of ruka Ex.PD. PW5 HC Balraj Singh was part of the police team, which had conducted the raids and recovered the contraband. He supported the case of the prosecution completely. ASI Gopi Chand was examined as

PW6, who was heading the police team, which apprehended the accused at the spot and had recovered the contraband from him. He also conducted the initial investigation as well.

After examination of the prosecution witnesses was over, the statement of accused under Section 313 Cr.P.C., was recorded and he pleaded his false implication. He submitted that nothing was recovered from him and he was falsely implicated in the instant case at the instance of Fauza Singh, Sarpanch.

To prove his defence, the accused examined three witnesses.

HC Lal Chand was examined as DW1, who stated that he had brought the Register No. 19 of Police Station Kalanwali, relating to 20.05.2002. Item No. 1695 dated 20.05.2002 was related to the present case and as per the said entry, there was no reference of deposit of sample seal with MHC and there was also no reference of sending the sample seal to FSL, while sending the sample parcel. However, in his cross-examination, the said witness admitted that they mention the brief gist of the case in the Rojnamcha and not the details. The names of the witnesses in the Rojnamcha were never recorded. He further admitted that in register No. 19, they never record regarding the deposit and sending of sample seal to FSL. DW2 Constable Jaivinder Kumar was examined to prove the log book of the official jeep. On 20.05.2002, the vehicle was used by ASI Gopi Chand for official work. Lachhman Singh was examined as DW3, who was member Panchayat of village Naurang and he knew

Chhinder Singh, accused. As per the said witness, he did not indulge himself in the sale of poppy husk etc. About 2 ½ years ago, the police had apprehended Chhinder Singh from his house and no chura post was recovered from accused and was falsely implicated in the case due to party faction in the village and at the instance of Fauza Singh, Sarpanch of their village with whom the accused had enmity.

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

At the outset, learned counsel for the appellant does not wish to challenge the impugned judgment of conviction and prays that a lenient view may be taken in the matter of awarding of sentence. He stated that at the time of conviction, the appellant was aged 45 years and he was facing the agony of trial/appeal since last 21 years. Even, at present, he is aged about 63 years and is a senior citizen. Even no other case was registered against him and the quantity of the contraband from him was non-commercial in nature.

Even though, learned counsel had not assailed the judgment of conviction but I have gone through the evidence carefully and found that all the statutory provisions of the NDPS Act had been duly complied. When the police party headed by ASI Gopi Chand suspected that appellant was carrying a contraband, a notice under Section 50 of the NDPS Act was issued to him and he was given the option to get himself searched in the presence of a gazetted officer or a Magistrate. Even otherwise, the provisions of Section 50 of the NDPS Act were not applicable to the facts of the instant case,

as the poppy husk was recovered from the gunny bag and not from the personal search of the accused. Still further, in the search and seizure, all the mandatory provisions were complied and after arrest, the accused, witnesses and the recovered quantity of poppy husk were produced before the SI/SHO, who verified the facts from the accused and the witness had put his own seal as well. Even a report under Section 57 of the NDPS Act was prepared and the SHO, after making his endorsement, sent the same to the higher police officers. Even, the report of FSL Ex.PH revealed that the sample sent to the FSL contained poppy straw (chura post). Even, I have perused the statements of all six witnesses and their testimonies inspire confidence. Even though, the appellant had taken a defence that he had been falsely implicated due to party faction in the village and at the instance of Fauza Singh, Sarpanch, still, the said defence could not be produced by producing some cogent and convincing evidence. I have also gone through the findings recorded by the learned trial Court and find no grounds to interfere with the same. Thus, the impugned judgment of conviction is ordered to be upheld.

However, this Court can not lose sight of the fact that at the time when the appellant was convicted, he was aged about 45 years and at present, he is a senior citizen. As per the learned counsel for the appellant, he is the sole bread earner in the family. The custody certificate reveals that no other criminal case was registered against the present appellant except the present case and he has faced the agony of trial/appeal since 21 years. Even, as per the custody

certificate, he has undergone 04 months and 02 days including remission of sentence out of the total sentence of 03 years.

Consequently, the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine is enhanced to Rs. 30,000/-. The amount of fine shall be deposited by the appellant/accused in the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare, Fund, within a period of two months, failing which, the appellant shall undergo rigorous imprisonment for a period of 02 months, as observed by the learned trial Court.

All pending applications, if any, are disposed of, accordingly.

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

Records of the Court below be sent back.

18.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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