

325 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-330-SB-2015

Date of decision : 20.01.2023

Gurdeep Singh @ Kukku

....Appellant

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Gaurav Sharma, Advocate for
Mr. B.S. Aulakh, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Arjun Sheoran, DAG, Punjab.

VIKRAM AGGARWAL, J. (ORAL)

The present appeal is directed against the judgment dated 03.12.2014, passed by the Special Judge, Fatehgarh Sahib, vide which the appellant was convicted under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and was sentenced to undergo rigorous imprisonment for a period of one year. A fine of Rs.15,000/- was also imposed, in default of payment of which further imprisonment for three months was ordered.

At the outset, learned counsel for the appellant submits that he does not challenge the judgment on merits and keeping in view the fact that the alleged offence was committed in October 2012 i.e., more than 10 years ago and the appellant has been facing the ordeal of trial since then, coupled with the fact that he has also undergone custody for a period of 04 months and 02 days as per the custody certificate filed in the Court today, the Court may consider modifying the order of sentence to that already undergone by the appellant.

On the other hand, learned counsel for the State of Punjab has

opposed the prayer stating that the trial Court already sentenced the appellant to a

very less period of imprisonment and therefore he does not deserve any modification in the sentence. It has also been submitted that there was another case registered against the appellant. Learned counsel for the State has also submitted that there is no illegality or infirmity in the judgment of the trial Court and that the prosecution had proved its case against the appellant beyond a reasonable doubt. It has been contended that offences under the act are serious offences and the appellant, therefore, does not deserve any leniency.

The allegation against the appellant is that on 09.10.2012, the appellant was apprehended by police party headed by one Inspector-Gurlzar Singh. The appellant was sitting on a Bench and was carrying a plastic bag in his right hand. On his search, which was done after due compliance of the statutory provisions, 10 Kgs of poppy husk was recovered from him. FIR was registered and investigation commenced. After the completion of investigation, final report under Section 173 Cr.P.C., was submitted and trial commenced. The prosecution examined five witnesses whereas two witnesses were examined by the appellant in defence.

After considering the evidence led by the prosecution, the learned trial court convicted the appellant under Section 15 of the Act and sentenced him to undergo imprisonment for a period of one year and a fine of Rs.15,000/- was also imposed. In default of payment of fine, rigorous imprisonment for three months was ordered to be undergone.

I have perused the judgment and find that the same is based upon proper appreciation of the evidence led by the prosecution as also on settled principles of law.

The prosecution was successful in proving its case against the appellant beyond a reasonable doubt. I do not, therefore, find any reason to interfere in the judgment of conviction passed by the learned trial court.

Coming to the order of sentence, no doubt the imprisonment for 10 Kgs of poppy husk which was a medium quantity could have gone up to 10 years and fine could have extended up to one lac rupees. However, the learned trial Court, in its wisdom imposed a sentence of one year and fine of Rs.15,000/-. I do not find any reason to go into the question of the adequacy of sentence especially when the State is not in appeal against the sentence. The incident took place on 09.10.2012 i.e. more than 10 years ago. The appellant has been facing the ordeal of trial for the last more than 10 years. Even the current appeal is pending for the last almost 08 years now. The appellant has already undergone custody of 04 months and 02 days as per the custody certificate filed in the Court today. The appellant, therefore, suffered a protracted trial. It has to be borne in mind that the pendency of a criminal case against a person is no less punishment than undergoing imprisonment. It continuously weighs on the mind of a person and there is the fear of going to jail any time again. Living with this fear is also akin to imprisonment. The other case referred to by learned State counsel also does not have any bearing in this case as in that case also, the appellant was sentenced to the imprisonment already undergone by him.

Considering the matter from all angles and keeping in view the totality of the facts and circumstances, I deem it appropriate to modify the order of sentence of imprisonment to that already undergone by the appellant. However, there would be no modification in the sentence of fine and the same is affirmed.

The amount of fine would be payable/recoverable as per law.

The present appeal is disposed of with the aforesaid observations. A copy of the judgment be sent to the concerned trial Court/Chief Judicial Magistrate for necessary action.

20.01.2023
R.sharma

(VIKRAM AGGARWAL)
JUDGE

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