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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2042-SB-2006 (O&M)
Date of decision: 06.03.2025

Satyawan

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jaiveer Singh, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 06.10.2006 passed by learned Judge, Special Court, Rupnagar whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.104 dated 06.04.2005 registered under Section 15 of the NDPS Act at Police Station Mohali.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 9 months and to pay fine of Rs.1,000/- and in the event of default of payment of said fine, to further undergo rigorous imprisonment for two months.

Factual Background

3. Brief facts of the case are that secret information was obtained by ASI Charan Singh that the appellant was selling poppy husk at the rate of Rs. 35 per glass near a Truck Union. When the said police official visited the spot,

the appellant was found to be carrying a *jhola* on his left arm from which poppy husk was visible along with glass. A total of 2 kg of poppy husk was recovered from him.

4. After assessing all the material available on record, the learned trial Court found him guilty under section 15 of the NDPS Act and sentenced as mentioned above.

Contentions

5. Learned Legal Aid Counsel submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. He contends that the learned Court has not taken into consideration that no independent witness has been joined in the matter despite the fact that the appellant is apprehended from a public place. Moreover, the case of the prosecution rests completely on the testimony of the official witnesses, who are an interested party. Further, the mandatory provisions of Sections 42, 50 and 57 of the NDPS Act were not complied with. Finally, admittedly, there is an unexplained delay of 16 days in depositing the sample in the office of Chemical Examiner.

6. *Per contra*, learned State counsel opposes the prayer of the appellant and submits that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant does not deserve any leniency.

Observations And Analysis

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for being in possession of 2 kg of Poppy Husk, which falls under the purview of Section 15 of the NDPS Act. A perusal of the site plan would indicate that

the alleged contraband was recovered from a public place. Therefore, the argument qua non-compliance of Section 42 of the NDPS Act is misconceived as the said provision is not applicable when the recovery is made from a public place.

8. Further, the delay of 16 days in sending the samples to the Chemical Examiner is not fatal to the prosecution case, as the official witnesses have presented a consistent case that leaves no room for tampering with the sample. In addition to that, the lack of an independent witness cannot be said to make a dent in the case of the prosecution as nothing has been brought on the record that would indicate any animosity between the official witnesses and the appellant.

9. Further, since the recovery was made from the bag carried by the appellant, Section 50 of the NDPS Act would have no application. The said provision only comes into action when the person of the accused is searched. A two Judge Bench of the Hon'ble Supreme Court in *State of Rajasthan v. Parmanand and another (2014) 5 SCC 345*, speaking through Justice Ranjana P. Desai, has held as under:

"15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in the light of the judgements of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."

10. Finally, a perusal of the custody certificate of the appellant suggests that he is not involved in any other case and has already undergone the sentence of 9 months awarded to him.

Conclusion

11. Therefore, in view of the discussion above, this Court finds that learned counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, the present appeal is dismissed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

13. The High Court Legal Services Authority is directed to remunerate the learned Legal Aid Counsel as per rules.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025
Neha

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