

**(2011) 02 P&H CK 0132**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal A. No. 213 SB of 2011 (O and M)

Kulwant Singh @ Kanta Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Feb. 15, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15

**Hon'ble Judges:** K.C. Puri, J

**Bench:** Single Bench

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**Judgement**

K.C. Puri, J.

This is an appeal directed by Kulwant Singh @ Kanta Singh against the judgment dated 18.1.2011 passed by Sh. Kamaljit Lamba, Judge Special Court, Sangrur, vide which the Appellant has been convicted u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as "the NDPS Act"), for having been found in possession of 10 kgs of poppy husk.

2. Briefly stated, the case of the prosecution is that on 24.9.2005, police party headed by ASI Darshan Singh was on patrolling and when it reached near the Kacha minor bridge within the vicinity of village, Banarsi, a person was seen coming from front side, who disclosed his name as Harbans Lal s/o Ram Dial and when ASI Darshan Singh was talking with him, at about 12.30 P.M., from village, Padarath, a person was seen coming on kacha path carrying a plastic bag on his head and on seeing the police party he got perplexed and tried to retreat and on the basis of suspicion, he was apprehended and his whereabouts were enquired. Suspecting that there was something intoxicant in the bag carried by the accused, ASI Darshan Singh asked for the search of the bag by apprising the accused about his legal right to get the said bag searched in the presence of a Magistrate or a Gazetted Officer. However, on reposing faith in ASI Darshan Singh, the bag was searched and contraband in the form of poppy husk was recovered. Two parcels of sample of

poppy husk weighing 250 gms were separated and remaining on weighment was found to be 9 kgs 500 gms. On receipt of the report of the Chemical Examiner, challan was presented.

3. Charge u/s 15 of the NDPS Act was framed, to which accused pleaded not guilty and claimed trial.

4. The prosecution in order to bring home guilt of the accused, examined PW-1 HC Harjoginder Singh, PW-2 HC Malkiat Singh, PW-3 ASI Darshan Singh, PW-4 Suresh Kumar Nazir, PW-5 ASI Sukhdev Singh, PW-6 Dara Singh Assistant Nazir, PW-7 Inspector Devinder Singh and closed the prosecution evidence.

5. The accused was examined u/s 313 Code of Criminal Procedure and all the incriminating evidence was put to him, to which he denied and stated that he has been falsely implicated. In defence evidence the accused examined Constable Karamjit Singh.

6. After appraisal of the evidence, the accused was found guilty u/s 15 of the NDPS Act and he was sentenced to undergo rigorous imprisonment for a period of 4 months and to pay fine of Rs. 2,000/-and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

7. Feeling dissatisfied with the abovesaid judgment of conviction the Appellant has preferred the present appeal.

8. Counsel for the Appellant has not challenged the conviction, but has submitted that the Appellant is facing trial since 2005. There is no other case against him. So, prayer has been made for reduction of sentence.

9. I have carefully considered the said submission and have also gone through the record of the case. So far as conviction recorded by the trial Court is concerned, the same has not been challenged. Otherwise also from the perusal of the judgment, it is revealed that the recovery is duly corroborated by the Investigating Officer alongwith recovery witnesses. There is absolutely no reason for falsely implicate the accused. So, the conviction recorded by the trial Court stands affirmed.

10. Now reverting to the quantum of sentence, as per the custody certificate placed on the file, the Appellant is not the previous convict and is not facing trial in any other case. The recovery from the Appellant is of 10 kgs of poppy husk.

11. Keeping in view the period of his trial, the ends of justice would be met in case, the sentence of the Appellant is reduced to the three months instead of four months and I order accordingly. The sentence of fine is however, maintained.

12. The appeal stands disposed of.