

(2010) 04 P&H CK 0151

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gurdeep Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 21, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 57

Hon'ble Judges: Satish Kumar Mittal, J; Jora Singh, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Jora Singh, J.

Gurdeep Singh son of Bhura Singh preferred this appeal to impugn the judgment of conviction/order of sentence dated 8.9.2006 passed by Special Judge, Mansa in Sessions Case No. 38 of 01.04.2003 arising out of FIR No. 224 of 10.12.2002 at Police Station, City Mansa. By the said judgment, he was convicted u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs. 2,00,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years.

2. Jagtar Singh, co-accused was acquitted of the charge levelled against him. Against acquittal of Jagtar Singh, no appeal was preferred by the State. Third accused, Tarsem Singh is a Proclaimed Offender.

3. Prosecution story, in brief, is that on 10.12.2002, police party headed by Inspector Harpal Singh while on patrol duty was going towards Sirsa Road on a govt. gypsy bearing registration No. PB-12 A-4436. When the police party was near the link road leading from Sirsa road to Market Committee where wall of grain market ends, then Gulzari Lal had met the police party. After joining Gulzari Lal, naka was laid. In the

meantime, truck bearing registration No. PB-13F-2060 was sighted while coming from the side of Sirsa road and was signalled to stop with the help of torch. Inspector, Harpal Singh had gone towards the driver side and driver was requested to alight from the truck. On enquiry, he disclosed his name as Gurdeep Singh son of Bhura Singh. ASI, Buta Singh along with other police officials had gone towards the second side of the truck. Two persons after alighting from the door of the truck and taking advantage of the darkness ran towards the Sirsa road. Police party had chased the accused but failed to apprehend them. Their names were disclosed by ASI Buta Singh and Head Constable Baldev Singh as Jagtar Singh alias Tari and Tarsem Singh.

4. Inspector, Harpal Singh suspected that there was some intoxicant substance in the truck and the truck was liable to be searched. Offer was given to the accused as to whether he wanted to be searched in the presence of a Magistrate or a Gazetted Officer then Gurdeep Singh replied to be searched in the presence of a Gazetted Officer. Consent memo was prepared. Information was sent to Police Control Room for sending a Gazetted Officer to the spot. After sometime, Mukhtiar Singh, DSP Sub Division Mansa along with his staff came to the spot in a gypsy. He had disclosed his identity to the accused as a Gazetted Officer. He told the accused that there seems to be some intoxicant in the truck and the same is to be searched. He gave him an offer to be searched in his presence or in the presence of any other Gazetted Officer or a Magistrate. Gurdeep Singh reposed faith in DSP, Mukhtiar Singh for carrying out the search of the truck in his presence. Consent memo was prepared. As per the instructions of the said DSP, truck was searched. Twenty bags of poppy husk were recovered from the truck. Each bag on weighment was found to be 35 Kgs. Serials No. 1 to 20 were put on the bags so recovered. Two samples each weighing 100 grams were separated from each bag and the samples were given as serial Nos. S-1 to S-20 and SD-1 to SD-20. Forty samples and the remaining poppy husk in 20 bags was separately sealed by the Investigating Officer with his own seal bearing impression "HS" and with the seal of the Gazetted Officer bearing impression "MS". Seal impressions of both the seals used were prepared separately. Seal of the Investigating Officer after use was handed over to PW Gulzari Lal, whereas DSP Mukhtiar Singh retained his seal with himself. Case property was taken into police possession vide memo attested by the witnesses. Ruqa was sent to the police station on the basis of which formal FIR was recorded. Rough site plan with correct marginal notes was prepared. Statements of the witnesses was recorded. On return to the police station, case property was kept by the Investigating Officer in his custody. Accused and the case property was produced before the Ilaqa Magistrate along with application Ex.PK and inventory report Ex.PL. Ilaqa Magistrate passed necessary orders on the application and inventory and also recorded the statement of Gurdeep Singh, accused. As there was no space in the judicial malkhana, so case property was kept by the Investigating Officer in his own custody. Special Report u/s 57 of the Act was sent on 11.12.2002. Parcels were handed over to Constable Manjit

Singh along with seal impressions and form No. 29 in the office of Chemical Examiner, Patiala. Receipt was handed over to the Investigating Officer. After completing the investigation and on receipt of report of the office of Chemical Examiner, Patiala confirming the contents of the sample parcels as poppy husk, report u/s 173(2) Cr.P.C was submitted in the Court.

5. Accused was charged u/s 15 of the NDPS Act in which he did not plead guilty and claimed trial.

6. Prosecution examined DSP, Mukhtiar Singh as PW-1, SI, Buta Singh as PW-2 and Inspector Harpal Singh as PW-3. They have deposed as to how 20 bags of poppy husk were recovered from the truck driven by the accused and how samples were drawn and sealed. SI Gurdeep Singh as PW-4, ASI, Magdur Singh as PW-4A and Constable Manjit Singh was examined as PW-5. Their statements are of formal nature.

7. After the close of prosecution evidence, statements of the accused were recorded u/s 313 Cr.P.C. Accused denied all the allegations of the prosecution and pleaded to be innocent.

8. Opportunity was given to lead defence but no defence was led.

9. After hearing learned Public Prosecutor for the State, learned defence counsel for the appellant-accused and from the perusal of the evidence on the file, trial court came to this conclusion that appellant has committed an offence punishable u/s 15 of the NDPS Act and was sentenced as stated aforesaid.

10. We have heard the learned defence counsel for the appellant, learned State counsel and have gone through the evidence on the file.

11. After arguing for some time, when learned Counsel for the appellant failed to point out any illegality or infirmity in the impugned judgment of the trial Court, he argued that in the facts and circumstances of this case, a lenient view be taken on the ground that appellant is the first offender and is a poor man and sole bread winner of the family. He requested that minimum sentence prescribed under the Act be awarded and in support of his contention, defence counsel relies upon the decision of the Hon"ble Supreme Court in Balwinder Singh and Ors. v. Asstt. Commr. Custom and Central Excise AIR 2005 SC 2917, wherein while taking into consideration the fact that the accused was the first offender, the sentence of imprisonment for a period of 14 years was reduced to 10 years.

12. State counsel for the respondent-State argued that appellant has committed offence punishable u/s 15 of the NDPS Act. Keeping in view the quantities of contraband recovered, appellant was rightly convicted and sentenced but State counsel failed to point out that appellant is not the first offender and is not a poor man and the only bread winner of this family.

13. Investigating Officer one of the recovery witness and Gazetted Officer categorically stated that when the police party was holding a nakabandi then the truck was sighted while coming from the side of Sirsa road and was signalled to stop. Appellant was driving truck and other persons were in the truck. But, after taking the benefit of darkness, they had fled away from the spot. Despite the efforts of the police officials, they could not be apprehended. Offer was given to the accused as to whether he wants to be searched before a Gazetted Officer or a Magistrate then as per reply Gazetted Officer was summoned at the spot. Gazetted Officer after disclosing his identity to the appellant again gave an offer as to whether he wants to be searched before a Gazetted Officer or a Magistrate then as per reply of the appellant on search of the truck, 20 bags of poppy husk were recovered. Two samples each weighing 100 grams were separated from each bag. Samples and the remaining poppy husk in the bags were sealed by the Investigating Officer. Case property along with appellant was also produced before the Ilaqa Magistrate. Seals were found to be intact. Twenty sample parcels were deposited in the Laboratory on the next date. Report of the laboratory is to the effect that contents of the samples were found to be of poppy husk. After going through the evidence on the file, we are of the opinion that there is no illegality or infirmity in the impugned judgment. While arguing the case learned Counsel for the appellant failed to point out any illegality or infirmity. Only request was to reduce the sentence to the minimum prescribed under the Act.

14. After the accused is held guilty for the offence punishable under the Act then duty of the Court to award proper and reasonable sentence. Keeping in view the nature of offence and the antecedents of the accused, in *Union of India v. Kuldeep Singh* AIR 2004 SC 827, Hon"ble Supreme Court observed as under:

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But, in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformity disproportionate punishment has some very undesirable practical consequences.

15. Keeping in view the observation of the Hon"ble Supreme Court and the facts and circumstances of this case, we are of the opinion that ends of justice would be fully met if the sentence of imprisonment is reduced to the minimum prescribed u/s 15 of the Act. Admittedly, appellant is the first offender. No other case was pending against the appellant. Appellant is a poor man and is the only bread winner of the

family. In Balwinder Singh's case (supra), 17.5 Kg of heroin and 39 Kgs of heroin of foreign origin was recovered. Keeping in view that the accused is a first offender, Hon"ble supreme Court reduced the sentence of imprisonment for a period of 14 years to 10 years, whereas in the present case, recovery is of 20 bags of poppy husk. So conviction of the appellant u/s 15 of the Act is upheld but keeping in view the antecedents of the appellant, sentence of imprisonment is reduced from 20 years to 10 years. Fine is also reduced from Rs.2,00,000 to Rs. 1,00,000/-. In default of payment of fine, appellant is directed to further undergo RI for a period of two years.

16. With the aforesaid modification qua sentence, appeal preferred by Gurdeep Singh is dismissed.