

(2010) 12 P&H CK 0384

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 2324-SB of 2010

Amar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Dec. 21, 2010**Acts Referred:**

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

Hon'ble Judges: Rajan Gupta, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Rajan Gupta J.

This is an appeal against the judgment of conviction and order of sentence dated 13.09.2010, delivered by Judge, Special Court, Ferozepur. The trial court after recording the prosecution evidence, came to the conclusion that the accused/Appellant was guilty of possession of contraband (i.e. 30 kgs of poppy husk). He was convicted u/s 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as "the Act") and sentenced to undergo RI for three years and to pay a fine of Rs. 20,000/-, in default whereof to further undergo RI for three months.

2. Feeling aggrieved against the judgment of the trial court, the Appellant has approached this Court through the instant appeal.

3. Learned Counsel for the Appellant states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. Learned Counsel has submitted that the Appellant is a first offender and has small children and sole bread winner of his family. According to him, in the present case the quantity of poppy husk recovered from the possession of the Appellant is much below the commercial quantity and out of the total sentence of

three years awarded to the Appellant, he has undergone 08 months and 07 days by now. Learned Counsel, therefore, prays that keeping in view the fact that he is a first offender and has to support his family and the quantity of contraband recovered from him is below the commercial quantity, the sentence be reduced to the period already undergone by him.

4. Learned State counsel has already placed on record a reply by way of affidavit of the Superintendent, Central Jail, Ferozepur, according to which the Appellant had undergone 08 months and 07 days of sentence till now. He submits that in case conviction of the Appellant is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

5. I have heard learned Counsel for the parties.

6. Briefly, the prosecution case is as follows:

On 17.10.2004, a police party headed by ASI Ram Sarup was proceeding from villages Haripura and Bakainwala towards village Danewala on the link road in connection with patrol duty on private jeep. When the police party was little away from the bridge of the seepage drain from village Danewala Satkossi, the accused/Appellant was seen coming on the western bank of the seepage drain carrying a plastic bag on his head. On suspicion ASI Ram Sarup apprehended the accused/Appellant and inquired about his name and address and told him that his search was to be conducted by apprising him about his legal right of search in the presence of Gazetted Officer or Magistrate and the accused consented for his search to be conducted by a Gazetted Officer. DSP, Abohar Narinder Singh was called on the spot. The accused reposed confidence in him and preferred his search in his presence regarding which consent memo Ex. P11 was prepared. After following the necessary formalities, search of plastic bag was conducted by ASI Ram Sarup, which led to recovery of 30 kgs of poppy husk, out of which 250 grams of sample was separated and converted into separate parcel. The remaining material i.e. 29 kgs and 750 grams was put in the separate parcel MO-1. Both the parcels were sealed by ASI Ram Sarup and DSP Narinderpal Singh with their respective seals bearing mark "RS" and "NPS". Both of them prepared sample of their respective seals on chit Ex.P2. ASI Ram Sarup entrusted the seal after use to HC Baltej Singh whereas DSP Narinderpal Singh retained his seal. The entire case property was taken into police possession vide recovery memo Ex. P12. After completion of investigation and on receipt of chemical examiner report Ex. P8, the accused was sent for trial.

7. Finding a prima facie case u/s 15 of the NDPS Act, charge sheet was framed against the accused/Appellant to which he pleaded not guilty and claimed trial.

8. To substantiate its case against the accused/Appellant the prosecution examined as many as five witnesses.

9. The statement of accused u/s 313 Code of Criminal Procedure was recorded, wherein the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. However, he did not adduce any evidence in his defence.

10. On the basis of the evidence on record, the learned trial court held the Appellant guilty of the charge framed against him and sentence him as already indicated above.

11. On a perusal of the impugned judgment of the court below, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the Appellant guilty of the charge framed against him. There is no infirmity or illegality in the findings given by the court below. The conviction of the Appellant is, thus, affirmed.

12. Even counsel for the Appellant, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the Appellant is a first offender, poor person and main bread winner of his family.

13. Keeping in view facts and circumstances of the case, as also the fact that the Appellant is a first offender and sole bread winner of the family, I deem it fit to reduce his substantive sentence to one year R.I. However, the sentence of fine shall remain intact. Ordered accordingly.

14. The amount of fine if not already paid shall be deposited within three months from the date of receipt of certified copy of this order. However, in case fine aforesaid is not deposited within the stipulated period, the modification in quantum of sentence shall stand withdrawn and the Appellant shall undergo the remaining period of sentence as awarded by the trial court.

15. Except with the modification in the quantum of sentence as indicated hereinabove, the appeal stands dismissed.