

(2011) 03 P&H CK 0729

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 2190-SB of 2010 (O and M)

Kuldeep Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 29, 2011

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 21st August, 2010, delivered by Special Court, Jalandhar. 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 referred to be as "NDPS Act") and sentenced to undergo RI for three years and to pay a fine of Rs. 500/-, in default whereof to further undergo RI for six month.

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 sole bread winner of his family including five children. 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 awarded sentence of three

years, he has undergone approximately ten months. Learned Counsel, therefore, prays that keeping in view the fact that he is a poor man and has to support his family including five children 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 placed on record a reply by way of affidavit dated 30th October, 2010 of the Superintendent, Central Jail, Jalandhar, according to which the Appellant had undergone 05 months and 06 days of sentence as on 30.10.2010. 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 both the parties.

6. Briefly, the prosecution case runs thus:

On 25th March, 2008, SI Avtar Singh along with the police party was present at bus stand, Mudhan Gate on G.T. Road where a secret information was received about the accused that he was in the trade of selling poppy husk. He had kept large quantity of poppy husk at his residential Dera and was waiting for his clients to sell it. On this information, a raid was conducted at the disclosed place where the accused was sitting along with a jute bag. His name and parentage was asked. Before searching the jute bag, he was apprised about his legal right and when he consented for his search, search of the jute bag led to the recovery of 30 Kgs of poppy husk from him. After drawing one sample of 250 gms of poppy husk, the remainder was weighed. The entire case property was taken into police possession. After completion of investigation and on receipt of report of chemical examiner, the accused was sent up for trial.

7. Finding a prima facie case u/s 15 of the NDPS Act, 1985 charge 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. In his defence the accused examined Gurnam Singh as DW 1.

10. On the basis of the evidence on record, the learned trial Court held the Appellant guilty of the charge framed against him and sentenced 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 argument, 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 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 poor man and sole bread winner of the family including five children, I deem it fit to reduce his substantive sentence to one year R.I. The fine imposed by the trial Court is, however, enhanced from Rs. 500/- to Rs. 5000/-. Ordered accordingly.

14. The fine 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 and fine, as indicated hereinabove, the appeal stands dismissed.