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(2012) 08 P&H CK 0267

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 2252-SB of 2005

Lakhwinder Singh @ Lakha	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 311#Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 â€" Section 15#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€" Section 15

Citation: (2012) 08 P&H CK 0267

Hon'ble Judges: Naresh Kumar Sanghi, J

Bench: Single Bench

Advocate: M.P.S. Mann, for the Appellant; Shekhar Mudgal, D.A.G., Haryana, for the Respondent

Judgement

Naresh Kumar Sanghi, J.
By way of this appeal, the appellant has challenged the judgment of conviction dated 07.11.2005 and the order

of sentence dated 09.11.2005 passed by learned Special Judge, Panipat, whereby the appellant was held guilty for the offence punishable u/s 15

of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ""NDPS Act"") for keeping in his possession 34 kg of

poppy husk without any lawful authority and was awarded rigorous imprisonment for three years besides payment of fine of Rs. 20,000/- . In

default of payment of fine, the appellant was ordered to undergo further rigorous imprisonment for a period of nine months. The brief facts of the

case are that on 28.08.2002, a police party headed by SI Chattar Singh (PW-4) was present at the gate of Bus Stand, Panipat, in connection with

his duty. SI Chattar Singh (PW-4) noticed that the appellant was carrying a plastic bag on his head. After noting down the credentials of the

appellant, a notice (Ex. PC) u/s 50 of the NDPS Act was served upon him. Vide reply (Ex. PC/1), the appellant reposed faith in the investigating

officer, therefore, the plastic bag possessed by the appellant, was searched and 34 kg of poppy husk was found. Two samples of 250 grams each

were drawn from the bulk poppy husk. The samples and the residue poppy husk were sealed with the seals of police officers and taken into

possession after preparing the recovery memo (Ex. PD). A ruqa (Ex. PA) was sent to the Police Station, on the basis of which, formal FIR (Ex.

PA/1) was recorded. After completing the formalities and preparing the site plan, recording the statements of the witnesses and arrest of the

accused, the police party went to the Police Station and all the material, witnesses as well as the accused were produced before Randhir Singh

Malik, Station Housing Officer, Police Station, City, Panipat (PW-5). He verified the investigation and affixed his own seal on the case property.

On the direction of the Station House Officer, the case property was deposited with the MHC of Police Station, City, Panipat. After receipt of

report (Ex. PX) from the Forensic Science Laboratory, the report u/s 173, Cr.P.C was presented before learned Area Magistrate. The case was

committed to the Court of Special Judge, at Panipat. Charge u/s 15 of the NDPS Act was framed against the appellant to which he pleaded not

guilty and claimed for trial.

2. In order to prove its case, the prosecution examined ASI Har Narain as PW-1; HC Dharam Pal as PW-2; ASI Rattan Singh as PW-3; SI

Chattar Singh as PW-4; Randhir Singh Malik as PW-5 and MHC Raj Singh as PW6. Learned prosecutor tendered the report (Ex. PX) received

from the Forensic Science Laborarty and closed the evidence of the prosecution.

3. The statement of the appellant was recorded in terms of Section 311, Cr.P.C wherein, the appellant denied the prosecution version in to and

pleaded his false implication in the present case. No evidence in defence was led.

4. After hearing the learned counsel for the parties, learned Special Judge convicted and sentenced the appellant, as has been mentioned in the

initial part of this judgment.

5. Learned counsel for the appellant at the very outset stated that he did not want to proceed with the appeal on merits, however, in view of the

peculiar facts and circumstances, the sentence awarded to the appellant was on higher side.

6. Learned counsel for the State has produced the affidavit of Deputy Superintendent, District Jail, Karnal, showing the custody period undergone

by the appellant, which is taken on record.

7. I have heard learned counsel for the parties and with their active assistance, perused the material available on record.

8. Though learned counsel for the appellant has not proposed to argue the appeal on merits yet to satisfy myself, I have gone through the trial court

record as well as the impugned judgment. From the perusal of the statements of the prosecution witnesses it has been well established by the

prosecution that on 28.08.2002 the appellant was found in conscious possession of 34 kgs of poppy husk and learned trial court rightly held him

guilty for the offence punishable u/s 15 of the NDPS Act, therefore, the impugned judgment is upheld so far as the conviction of the appellant is

concerned.

9. Perusal of the affidavit of Deputy Superintendent, District Jail Karnal, reveals that the appeallant had suffered incarceration of 11 months and 17

days. The appellant is neither required nor involved in any other case. The FIR of the present case was registered on 28.02.2002 and since then,

the appellant is facing the agony of the trial and the appeal. During the course of the trial and the present appeal, the appellant was enlarged on bail

but he did not misuse the concession.

10. Keeping in view the totality of the circumstances of the case, the substantive sentence awarded to the appellant is reduced to the period

already undergone by him as an undertrial and convict in this case. However, the sentence of fine is enhanced from Rs. 20,000/- to Rs. 50,000/- .

The sentence prescribed by the learned trial court in default of payment of fine shall remain undisturbed. The appeal is partly allowed with the

aforesaid modification in the order of sentence awarded by learned trial court.