(2011) 08 P&H CK 0257

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 604-SB of 2011

Ram Kishore		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Aug. 25, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20

Citation: (2011) 08 P&H CK 0257

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 8th January, 2011, delivered by Judge, Special Court, Patiala. The trial court after recording the prosecution evidence, came to the conclusion that the accused/Appellant was guilty of possession of contraband (i.e. 5 Kgs of Ganja). He was convicted u/s 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to be as "Narcotic Drugs and Psychotropic Substances Act") and sentenced to undergo RI for 21/2 years and to pay a fine of Rs. 5000/-, in default whereof to further undergo RI for one 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 want to assail the judgment of conviction. Learned Counsel has submitted that the Appellant is a poor man and sole bread winner of his family. According to him, in the present case the quantity of Ganja

recovered from the possession of the Appellant is much below the commercial quantity and out of the total awarded sentence of one year, he has by now undergone 09 months and 09 days. Learned Counsel, therefore, prays that keeping in view the fact that he is a poor man 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 referred to a custody certificate dated 7th April, 2011, by way of affidavit of Superintendent, Central Jain, Patiala, which is already on record, according to which the Appellant had already undergone 04 months and 13 days of sentence as on 01.04.2011. 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.

Briefly, the prosecution case runs thus:

On 2nd November, 2006, Inspector Rajesh Kumar of CIA, Rajpura alongwith ASI Gurmeet Singh and other police officials was present on main G.T. Road near village Uksi in connection with search of suspected persons and patrolling and was checking the vehicles. In the meantime, a bus came from Ambala side and stopped there. The accused (Appellant herein) alighted from the said bus carrying a plastic bag of green colour on his right shoulder. On seeing the police party ahead, the accused got nervous and turned towards Rajpura side. On suspicion, the accused was apprehended at the spot by the police officials. The investigating officer disclosed his own identity to the accused. On inquiry, the accused disclosed his name as Ram Kishore son of Surajpal Singh. The I.O. told the accused that he suspected some contraband in the bag carried by him and as such he wanted to conduct its search. He also apprised the accused of his legal right regarding his search in the presence of some Gazetted Officer or a Magistrate, but the accused reposed faith in the I.O. Then, his consent statement Ex.PA was recorded, which was signed by the accused. Thereafter, the I.O. conducted search of the bag and Ganja was recovered from it, out of which two samples of 100 grams each were taken and the remaining on weighment came out to be 4 Kgs and 800 grams, which was put in the same bag and separate parcels were prepared and sealed. The entire case property was taken into police possession. The accused was arrested and after completion of investigation and on receipt of report of chemical examiner Ex. PX, the accused was sent up for trial.

6. Finding a prima facie case u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, charge was framed against the accused/Appellant to which he pleaded not guilty and claimed trial.

7. To substantiate its case against the accused/Appellant the prosecution examined as many as six witnesses.

8. 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. The accused did not adduce any evidence in his defence.

9. 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.

10. 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.

11. 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.

12. 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 his family, 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. 5000/-to Rs. 25,000/-. Ordered accordingly.

13. 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.

14. Except with the modification in the quantum of sentence and fine, as indicated herein above, the appeal stands dismissed.