

(2010) 11 P&H CK 0600

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 473-SB of 2010 (O and M)

Jagga Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Nov. 16, 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.

1. This is an appeal against the judgment of conviction and order of sentence dated 18th January, 2010, delivered by Special Judge, 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. 20 Kgs of poppy husk). He was convicted u/s 15(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 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 six 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 poor man 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 awarded sentence of three years, by now

he has undergone 11 months and 07 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 placed on record a reply by way of affidavit of the Superintendent, Central Jail, Ferozepur, according to which the Appellant had undergone 11 months and 06 days of sentence as on 15.11.2010. 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:

7. On 23rd March, 2006, a police party headed by ASI Gurdarshan Singh was going from village Kular towards Rajasthan Border in connection with patrol duty on private Gypsy. When the police party was one kilometer away from village Kular, the accused/ Appellant was seen coming from the opposite side on foot carrying a Gattaplastic on his head. On seeing the police party, he became nervous and tried to turn towards his left hand. On suspicion, ASI Gurdarshan Singh apprehended him with the help of other police officials. In the meantime, one Sita Singh, a resident of village Bahawwala reached there who was joined in the police party. The said ASI inquired the name and address of the accused and thereafter conducted the search of the Gattaplastic from which poppy husk was recovered. On weighment, the poppy husk came to be 20 Kgs, out of which two samples each containing 100 grams were separated and converted into two separate parcels. The remaining material was put in the same Gattaplastic and converted into bulk parcel and were sealed bearing impression "GS". Specimen seal impression Ex.P1 was prepared. The seal after use was entrusted to Sita Ram, the independent witness. The entire case property was taken into police possession vide recovery memo Ex.P10. After completion of investigation and on receipt of report of chemical examiner, the accused was sent up for trial.

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

9. To substantiate its case against the accused/Appellant the prosecution examined as many as four witnesses.

10. 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 produce any evidence in his defence.

11. 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.

12. 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.

13. 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.

14. 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, 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. 20,000/-to Rs. 30,000/-. Ordered accordingly.

15. 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.

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