

CASE NO.:
Appeal (crl.) 276 of 2007

PETITIONER:
Billu

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 12/02/2008

BENCH:
A.K.MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT
O R D E R

Delay condoned.
Appeal admitted.

This appeal is directed against the judgment and order dated 28.01.2004 of the learned Single Judge of the High Court of Punjab & Haryana whereby the learned Single Judge has reversed the judgment and order of acquittal recorded by the Addl. Sessions Judge, Sangrur under Section 15 of the NDPS Act, 1985. The Trial Court acquitted the accused-appellant on the ground that the prosecution has failed to establish that the accused-appellant was in possession of 90 Kgs. of poppy husk. Aggrieved against the order of acquittal of the accused-appellant, the State of Punjab preferred an appeal before the High Court which was allowed and the accused was convicted of the offence punishable under Section 15 of the NDPS Act and sentenced to undergo RI for ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo RI for two years.

This appeal has been filed through Jail and Mr. Shiv Kumar Suri, Advocate was assigned the case through Supreme Court Legal Services Committee.

Learned counsel for the appellant has submitted that in fact the accused was never served with the notice issued by the High Court and the appeal has been decided by the High Court without hearing the accused. Therefore, he submitted that the judgment and order of the High Court be set aside and case may be remitted back to the High Court to be decided after giving an opportunity to the accused-appellant.

We summoned the original record of the High Court to satisfy ourselves whether the service of notice was effected on the accused or not. According to the High Court proceedings it appears that on 2.4.1991 leave to appeal was granted and notice was issued. Thereafter it does not appear from the record whether the accused was served at any point of time or was represented before the High Court.

Learned counsel for the appellant has raised a specific ground in his memo of appeal that the accused was never served and represented before the High Court and that the conviction has been recorded behind the back of the accused. Learned counsel for the State is not in a position to make any statement whether the accused-appellant was served or not before the High Court.

Since this is a case where the accused-appellant has been convicted for a term of ten years and the offence charged is of grave nature, therefore we cannot presume the service of notice on the accused. However, in the interest of justice we think it proper that looking to the gravity of offence and the sentence imposed upon the appellant, he may be given a fair trial in the matter. Hence, we set aside the judgment and order of conviction passed by the High Court and remit the appeal to the High Court to decide the same afresh after hearing the accused in accordance with law. We are informed that the accused-appellant is in jail. Since, the accused-appellant has been in jail in view of the conviction recorded by the High Court, it would be in fairness of things that we enlarge him on bail so that he gets an opportunity to present case before the High Court. We direct that the accused-appellant shall be enlarged on bail upon his furnishing personal bond in the sum of Rs.10,000/- with two solvent sureties in the sum of Rs.5,000/- each to the satisfaction of the Trial Court. Since the accused has been enlarged on bail, he will not require any more notice by the High Court.

The appeal is allowed and judgment and order of the High Court is set aside and

appeal is remitted to the High Court for deciding the same afresh after giving an opportunity of hearing to the accused-appellant. The records of the Courts below which have been received in this Court shall be sent back by the Registry forthwith.

Appeal allowed.

JUDIS