

Raj Kumar Mehta Vs. State

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Court : Delhi

Decided On : Sep-18-2013

Judge : S. P. Garg

Appellant : Raj Kumar Mehta

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON + :

18. h September, 2013. CRL.A. 895/2011 & Crl.M.B.No.852/2013 RAJ KUMAR MEHTAAppellant Through : Mr.S.S.Das, Advocate. VERSUS STATE Through : .Respondent Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. The appellant-Raj Kumar Mehta challenges correctness of the judgment dated 26.04.2011 in Sessions Case No.105/2006 arising out of FIR No.43/2003 PS Sarai Rohilla Railway Station by which he was convicted for committing offences punishable under Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as NDPS Act). Vide an order dated 12.05.2011, he was sentenced to undergo RI for 20 years with fine ` 2 lacs for the said offence.

2. Raj Kumar Mehta (the appellant herein), Pradeep Kumar Chawla @ Chhottu, Harjinder Singh @ Jinda, Inder Singh, Mohd.Hanif and Harley were charge-

sheeted under Sections 21/23/24/29 of NDPS Act on the allegations that on or before 20.09.2003, they entered into a criminal conspiracy to possess heroin illegally and unlawfully. It was further alleged that pursuant to the said conspiracy Pradeep Kumar Chawla was found in possession of 2 kilograms heroin. On 20.09.2003, ACP Ravi Shanker of Inter State Crime Cell got information that Raj Kumar Mehta was smuggling smack from Pakistan and was supplying it to other countries through his local and foreigner conduits. A specific information was received by ACP Ravi Shanker that on 20.09.2003 at about 01.00 P.M. Raj Kumar Mehta would come at Sarai Rohilla Railway Station to deliver smack to an associate. A raiding party was organised. At around 01.10 P.M., Raj Kumar Mehta was seen coming from platform No.1, Sarai Rohilla Railway Station. He stood near a toilet which was under construction. Pradeep Kumar Chawla came and shook hands with him. Raj Kumar Mehta exchanged the green bag in his possession with the packet in possession of Pradeep Kumar Chawla. They were apprehended. The green bag recovered from Pradeep Kumar Chawla contained two packets of smack each weighting 1 Kilogram. The packet recovered from Raj Kumar Mehta contained 23,000 US Dollars. Necessary proceedings were conducted and First Information Report was lodged. Pursuant to Raj Kumar Mehtas disclosure statement, Harjinder Singh @ Jinda and Inder Singh were apprehended around 06.00 P.M. near Gol Dak Ghar. Inder Singh was found in possession of one kilogram smack. At that time, Harjinder Singh @ Jinda was sitting at the driver-seat of Indica Car bearing not HR-38-FT-9720 and at his instance the sweet box containing one kilogram smack was recovered from the dicky of the car. Subsequently, Mohd.Hanif, a Pak national, was apprehended at 09.00 P.M. from outside House not H-3/45 in Sector-11, Rohini and at his instance 2 kilograms and 50 grams smack kept in a tube and concealed underground near Japani Park was recovered. Pursuant to Harjinder Singh @ Jindas disclosure statement, Harley was apprehended on 22.09.2003 at about 01.00 P.M. from Munirka T-Point at Nelson Mandela Road near JNU and 300 grams smack was recovered from his possession. During investigation, two mobile phones from Pradeep Kumar Chawla and two mobile phones and four SIM cards from Harjinder Singh @ Jinda were recovered. Call details record revealed that all the accused persons were connected with each other. The samples of contraband were sent to Central

Forensic Science Laboratory (CFSL), and as per its report, these contained Diacetylmorphine (heroin). Statements of the witnesses conversant with the facts were recorded. After completion of the investigation all of them were charge-sheeted. The prosecution examined seventeen witnesses to substantiate the charges. In their 313 Cr.P.C. statements, the accused pleaded false implication. They examined six witnesses in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted all the accused persons named above under Section 29 of NDPS Act and sentenced them to undergo RI for 20 years with fine ` 2 lacs each. Pradeep Kumar Chawla, Harjinder Singh @ Jinda and Mohd. Hanif were further sentenced to undergo RI for 20 years with fine ` 2 lacs each for committing offence under Section 21 (c) of NDPS Act. Inder Singh and Harley were further sentenced to undergo RI for 15 years with fine ` 1.5 lacs and RI for 10 years with fine ` 1 lac respectively for committing offence under Section 21 (b) of NDPS Act. All the sentences were directed to operate concurrently. Convicts were given benefit under Section 428 Cr.P.C.

3. During the course of arguments, learned counsel for the appellant on instructions from Raj Kumar Mehta stated that he (the appellant) has opted not to challenge the conviction under Section 29 of NDPS Act. He however, prayed to take lenient view and reduce the substantive sentence to the period already undergone by him. Learned Additional Public Prosecutor has no objection to consider the mitigating circumstances to modify the sentence order.

4. I have heard learned counsel for the parties and have examined the record. Since the appellant-Raj Kumar Mehta has not opted to challenge the findings of the Trial Court on conviction under Section 29 of NDPS Act and there is overwhelming evidence coupled with recovery, the order of conviction of the Trial Court qua him stands affirmed.

5. Regarding order on sentence, it reveals that the appellant was sentenced to undergo RI for 20 years with fine ` 2 lacs for committing offence under Section 29 of NDPS Act. He is in custody since 26.09.2003. He has undergone about 10 years incarceration till date. He is not a previous convict and has clean

antecedents. He is a senior citizen of 80 years and has lost his wife during custody. He is suffering from various ailments. Medical report from G.B.Pant hospital/status report dated 10.05.2013 reveals that the appellant is suffering from Diabetes Mellitus and is under evaluation for Coronary Artery Disease (CAD) vide OPD No.1644753. He is also getting medical treatment consisting of oral Hypoglycemic Drugs + Medical treatment for CAD. Counsel relied upon State of M.P. vs. Babu Lal, 2008 (1) SCC 234.to emphasize that background of the prisoner, home life, prospects of his reformation and rehabilitation, emotional and mental condition etc. are relevant circumstances to tilt the scale on the propriety of sentence. Reliance was also placed on the judgment in Balwinder Singh vs. Asstt. Commissioner, Custom & Central Excise, AIR 200.SC 2917.where the recovery was of 175 Kilograms heroin and 39 kilograms opium and the appellant was the driver of the vehicle from where the narcotics substances were recovered. In those circumstances, the Supreme Court reduced the sentence from 14 years awarded by the Trial Court to 10 years. Reliance was also placed upon the judgment in M.Prabhulal vs. Assistant Director, DRI, 2003 (3) JCC 161.where the quantity recovered was 66 kilograms heroin. The appellant was sentenced to undergo RI for 10 years and to pay a fine of ` 1 lac. In Noor Haider Siddiqui vs. Narcotics Control Bureau, CrI.A.96/2005, this Court reduced the sentence from 20 years to 10 years though the recovery was 77 kilograms heroin. In the recent judgment Shahejadhkhan Mahebubkhan Pathan vs. State of Gujarat, 2013 (1) SCC 570.the Supreme Court relying upon Balwinder Singh vs. Asstt. Commr. Of Customs & Central Excise (supra), modified the sentence and reduced it from 15 years RI to the minimum prescribed term of 10 years. The recovery was of 500 grams brown sugar. It is relevant to note that in similar circumstances co-convict Pradeep Kumar Chawla @ Chhottu was sentenced to undergo RI for 12 years vide order dated 04.04.2013 in CrI.A.No.860/2011. It is significant to note that co-convict Inder Singh has since expired and the proceedings against him have been dropped as abated.

6. Keeping in view the above judgments of the Supreme Court and this Court, and peculiar facts and circumstances of this case, while upholding the conviction of the appellant under Section 29 of NDPS Act, order on sentence dated 12.05.2011 is modified and the substantive sentence of the appellant- Raj Kumar Mehta is

reduced from RI for 20 years to RI for 12 (Twelve) years with fine `1 lac and in default of payment of fine to further undergo SI for three months under Section 29 NDPS Act. Benefit of Section 428 Cr.P.C. shall be given and the period already undergone in judicial custody shall be counted and set off against the sentence awarded.

7. The appeal and Cri.M.B.No.852/2013 stand disposed of in the above terms.
(S.P.GARG) JUDGE September 18, 2013/sa

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