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Mukeem @ Imran Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-07-2012

Appellant : Mukeem @ Imran

Respondent : The State of Madhya Pradesh

Judgement :

1 HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT, JABALPUR SINGLE BENCH PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA CRIMINAL APPEAL NO.1554/2007 Mukeem alias Imran Vs. State of Madhya Pradesh ..... For the appellant : Shri Siddharth Datt, Advocate. For the respondent/State: Shri Ajay Tamrakar, Panel Lawyer. .....

JUDGMENT

(Delivered on the 7th day of August, 2012) The appellant has preferred this appeal against the judgment dated 21.6.2007 passed by the Special Judge under the NDPS Act, Sehore in Special Case No.81 of 2006 whereby the appellant was convicted for the offence punishable under Section 8/21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter it will be mentioned as NDPS Act.) and sentenced for five years rigorous imprisonment with fine of Rs.10,000/-, in default of payment of fine, he was to undergo additional rigorous imprisonment for six months.

2. Prosecution's case in short is that on 15.6.2006, SHO Kotwali, Sehore had received an information that the appellant was keeping heroin and was intending to sell it. Sub Inspector J.U. Siddiqui (PW13) had prepared a memo of intimation and 2 informed to his higher authorities including SDOP, Sehore. Since there was no possibility to get search warrant due to non- availability of the time, he prepared a memo about that reason and proceeded to the house of the appellant Mukeem. He took independent witnesses viz. Karan Singh (PW15) and Gulab Singh along with the police force. The appellant was present in his house. He was given the intimation of the information received by Sub Inspector J.U. Siddique and he was given an opportunity so that he could get his search by either a Magistrate or a Gazetted Officer. The appellant gave his consent to get his search by S.I, J.U Siddiqui and a memo was prepared. Before taking the physical search of the appellant entire Police Officers and officials gave their search. In the right pocket of the full pant of the appellant one folded newspaper was found in which 8 gms of heroin was found. It was physically tested and weighed by an electronic balance. Thereafter, it was properly seized and sealed. Before sealing of the entire material, two samples each of two grams were taken from the substance and all the packets were sealed properly. After returning to the Police Station a case was registered and the property was deposited in the Malkhana of the Police Station. Thereafter, it was dispatched to the Forensic Science Laboratory and in the report of the Forensic Science Laboratory found that the seized substance was heroin. Consequently, after due investigation a charge sheet was filed before the Special Court.

3. The appellant abjured his guilt. He did not take any 3 specific plea. He has stated that he was a mechanic by profession and Sub Inspector J.U Siddiqui had not given the repairing charges to the appellant and on demand of such repairing charges the appellant was falsely implicated in the matter. However, no defence evidence was adduced.

4. After considering the evidence adduced by the prosecution the learned Special Judge has convicted the appellant for the offence punishable under Section 8/21(b) of the NDPS Act and sentenced him as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that the memos Ex.P/15 and P/16 prepared for the consent to the Jamatalashi (personal search) were not prepared with the free consent of the appellant. The procedure adopted by the investigation officer was not according to the law and procedure and therefore, the appellant could not be convicted for the offence punishable under Section 8/21(b) of the NDPS Act. In the alternate it is submitted that the appellant was the first offender and according to the FSL report Ex.P/29 only 20.75% of diacetylmorphine was found in the sample and therefore, looking to the percentage of heroin its weight should be reduced to 20.75% which comes below 2 gms of the substance and therefore, the case of the appellant comes in the small quantity of narcotic substance. He could not be sentenced for such a lengthy period. He has remained in the custody for four years and therefore, his sentence may be reduced to the period which he has already 4 under gone in the custody. Also the fine amount may be removed.

7. On the other hand the learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct.

8. After considering the submissions made by learned counsel for the parties and looking to the prosecution's evidence it is to be considered as to whether the heroin was seized from the appellant ?. and Whether his sentence can be reduced ?.

9. Sub Inspector, J.U. Siddiqui (PW13) has proved the entire procedure of the seizure. The independent witness Karan Singh has turned hostile whereas the remaining independent witness Gulab Singh was not examined before the trial Court. However, so many police officials like Head Constable Balbir Singh Lamba (PW1), ASI P.S. Tomar (PW3) and so many other officials were examined to prove the entire procedure of the seizure. If S.I., J.U.Siddiqui was interested to implicate the appellant falsely in the case then it was not possible for him to get so many police officials in his favour to support this case. Under such circumstances, defence taken by the appellant appears to be hypothetical.

10. Learned counsel for the appellant has submitted that the consent obtained from the appellant about his search was not taken in a proper manner. He referred to the documents Ex.P/15 and P/16. If such documents are perused then it is apparent from Ex.P/15 that it was proposed to the appellant that he could get his search by a Gazetted Officer or a Magistrate. Thereafter, his 5 consent was recorded in memo Ex.P/16 that search may be taken by Shri Siddiqui and thereafter, his search was taken. There is no ambiguity found in the memo of the consent Ex.P/16. It is possible that memo is not written in the proper words but the inference can be drawn from the memo that the appellant gave his consent that his search could be taken by S.I., J.U. Siddiqui. Thereafter, the staff gave their search and in search of the appellant one small packet made up by news paper was found in his right pocket and it was a brown powder which could be heroin or brown sugar as per physical examination.

11. The contraband substances was seized on 15.6.2006 and it was dispatched on 16.6.2006 to the Forensic Science Laboratory and received by the Forensic Science Laboratory on 19.6.2006. A report was given by the F.S.L on 26.7.2006. Under such circumstances, there is no irregularity found by which the testimony of Sub Inspector, J.U.Siddiqui may be discorded. Under such circumstances, the learned Special Judge has rightly convicted the appellant for the offence punishable under section 8/21(b) of the NDPS Act. There is no basis by which any interference can be done in the conviction directed by the trial Court.

12. So far as the sentence is concerned, the appellant was the first offencer and looking to the percentage of heroin found in the sample it can be said that it was slightly more than 2 gms of pure heroin. Under such circumstances, looking to the quantity of heroin the appellant could be sentenced for one years rigorous 6 imprisonment with some fine. At present he has remained in the custody for more than four years. Under such circumstances, it is a fit case in which the sentence passed against the appellant may be reduced to the period which he has already undergone in the custody and he has also undergone the default sentence and hence fine imposed upon him may not be recovered from him.

13. On the basis of the aforesaid discussion the appeal filed by the appellant is hereby partly allowed. The conviction directed by the trial Court for offence punishable under Section 8/21(b) of the NDPS Act is hereby maintained but, his jail sentence is reduced to the period which he has already undergone in the custody. Looking to the entire custody period of the appellant it is also clear that the appellant has undergone the default sentence in lieu of the payment of fine.

14. The Registry is directed to issue a super session warrant accordingly so that the appellant may be released forthwith.

15. Copy of the judgment be sent to the trial Court with its record for information and compliance. (N.K.GUPTA) JUDGE 7 8.2012 bina

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