

Vinod Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-13-2012

Appellant : Vinod

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Dinesh Tiwari

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.71/2008 Vinot and
another VERSUS State of Madhya Pradesh
----- Shri Dinesh Tiwari,
counsel for the appellant Vijay. Shri G.S.Thakur, on behalf of legal aid for the
appellant Vinod. Shri Ajay Tamrakar, Panel Lawyer for the State/respondent.

JUDGMENT

(Delivered on the 13th day of July, 2012) The appellants have preferred this appeal against the judgment dated 24.11.2007 passed by learned Special Judge under NDPS Act, Sehore in Special Case No.120/2006, whereby the appellants were convicted for offence punishable under sections 8/21 (b) of NDPS Act and each sentenced for 7 years rigorous imprisonment with fine of Rs.20,000/-. In default of payment of fine, the appellants have to undergo for one year's additional

rigorous imprisonment.

2. Prosecution's case, in short, is that, on 20.10.2006 at about 7.30 p.m. in the evening, SHO Police Station Kotwali, District Sehore Shri Harish Sharma was ::

2. :: Criminal Appeal No.71 of 2008 informed that three persons of District Jhalawad (Rajasthan) have brought some brown sugar for sale and they were waiting at Bus stand Sehore. Shri Harish Sharma summoned two witnesses immediately and recorded the information in Rojnamcha and thereafter, information was given to S.D.O.P. Sehore but, no search warrant was received. Thereafter, Shri Harish Sharma went to the spot with police force. The appellants were given an opportunity to get their search before the Magistrate or any gazetted officer but, they preferred to get their search before S.H.O. Shri Harish Sharma. Thereafter, search was made. Memo of search was prepared. In search, 100 gms of brown sugar was found from the appellant Vinot and a similar quantity was found with the appellant Vijay. Two samples of 5 gms each were taken from the quantity seized from the appellants and entire material was sealed in a separate manner. Various memos were prepared according to the provisions of the Act and Rules. Thereafter, samples were sent to Forensic Science Laboratory. It was found that those samples were of brown sugar. After due investigation, a charge-sheet was filed before the Special Court.

3. The appellants abjured their guilt but, they did not take any specific plea in the case and therefore, no defence evidence was laid from their side. ::

3. :: Criminal Appeal No.71 o

4. Learned Special Judge after considering the evidence adduced by the prosecution, convicted and sentenced the appellants as mentioned above.

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

6. Appellant Vinot is absconding. His appeal was separated vide order dated 2.5.2012 but, while considering the application of early hearing of the appellant Vijay, looking to the custody period of the appellants, it was directed that appeal of the appellant Vinot may also be heard with help of lawyer from the penal of legal

aid. It is found that the appellant Vinot has completed only 2 years in the custody and thereafter, he absconded when he was on parole. Therefore, his case is different. Under such circumstances, appeal filed by the appellant Vinot is not decided by the present judgment.

7. Learned counsel for the appellant Vijay submits that case was registered against the appellant as well as against one Anees. The criminal appeal No.19/2008 was filed by the accused Anees against the judgment dated 24.11.2007 passed by the Special Court, which is a judgment under consideration in the present appeal and learned Single Bench of this Court has decided that appeal with the judgment that the jail sentence of the appellant be reduced to the period, which he has already undergone in ::

4. :: Criminal Appeal No.71 of 2008 the custody. The appellant Vijay remained in custody since his date of arrest and therefore, he is in custody since 20.10.2006 till today. The appellant Vinot remained on temporary bail for 20 to 25 days in the year 2008 due to the marriage of his sister and thereafter, he absconded. Under such circumstances, the appellant Vijay remained in the custody for approximately 5 years and 7-8 months and therefore, as a matter of parity, his sentence may be reduced to the period, which he has already undergone in the custody.

8. After considering the submissions made by learned counsel for the parties, it appears that the appellant Vijay did not challenge the conviction directed against him and therefore, there is no need to discuss about the merits of the case. As far as his sentence is concerned, they remained in the custody for more than 5 years whereas, the quantity of brown sugar seized from him is not of commercial quantity and therefore, no minimum sentence is required. Under such circumstances, where one accused was released by the learned Single Bench of this Court vide judgment dated 13.4.2012 on the ground that his sentence equivalent to the period of custody was sufficient, whereas the appellants remained in the custody for three months more. Under such circumstances, sentence can be reduced accordingly. The ::

5. :: Criminal Appeal No.71 of 2008 learned counsel for the appellant Vijay has also submitted that the appellant is a poor person, who cannot deposit the heavy

fine amount. He could be sentenced for 4 years rigorous imprisonment but, he has completed the sentence for more than 5 years. Therefore, he has already undergone the sentence which would be default sentence in lieu of fine therefore, such imposition of fine may be removed. Submission made by learned counsel for the appellant is acceptable and therefore, fine may be reduced.

9. On the basis of the aforesaid discussion, the appeal filed by the appellants is hereby partly allowed. Conviction directed by the Special Judge, Sehore for offence punishable under section 8/21 (b) of NDPS Act against the appellants is hereby maintained but, their sentence is reduced to the period, which they have already undergone in the custody. Fine is reduced from Rs.20,000/- to Rs.1,000/-. Jail authority may recover the fine amount from his wages earned by him in custody. In default of payment of fine, he shall undergo for 3 months rigorous imprisonment in addition.

10. Registry is directed to issue a supersession warrant in the case forthwith. ::

6. :: Criminal Appeal No.71 o

11. Copy of the judgment be sent to the trial Court for information and compliance but, record of the trial Court be kept here for consideration of the appeal filed by the appellant Vinod. (N.K.GUPTA) JUDGE 13 7/2012 Pushpendra

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