

Devsharan Tripathi Vs. the State of Madhya Pradesh

Devsharan Tripathi Vs. the State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/1048932

Court : Madhya Pradesh

Decided On : Jul-13-2012

Appellant : Devsharan Tripathi

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.2319/2011 Devsharan Tripathi Vs. State of Madhya Pradesh

..... For the
appellant : Shri Deepak Pendharkar, Advocate. For the respondent: Shri Ajay
Tamrakar, Panel Lawyer.
.....

JUDGMENT

(Delivered on this 13th of July, 2012) The appellant has preferred this appeal against the judgment dated 30.9.2011, passed by Special Judge, NDPS Act, Satna in Special Case No.7/2009 whereby he was convicted for offence punishable under Section 8 read with Section 20(a)(i) of the NDPS Act, 1985 and sentenced for four years rigorous imprisonment with fine of Rs.1000/-. It was further directed that he shall undergo for two months additional rigorous imprisonment in default of payment of fine.

2. The prosecution's story in short is that Shri R.P. Mishra (P.W.8) SHO, Police Station Barondha, District Satna had received an information in the morning of 23.9.2007 that the applicant had cultivated some plants of cannabis. After recording the memo of information and making entries in the Rojnamcha, Shri Mishra with the Police Force left the Police Station at about 10.00 a.m in 2 the morning. He also summoned two witnesses and intimation was given to them. Intimation was also sent to SDOP, Chitrakut but, he was not available in the office and therefore, intimation was given to the Reader of the SDOP. Under such circumstances, Shri Mishra could not get the search warrant. After reaching the spot, a notice was given to the appellant that search may be taken in the presence of the Magistrate or Gazetted Officer but, he agreed to get the search by Shri Mishra. In the courtyard of the house of the appellant, four plants of cannabis was found and they were duly seized. Their weight was found to be 5 kg. 950 gms. They were duly sealed and two samples of 100 gms each were separated. Various memos were prepared according to the rules and provisions of the Act. A spot map Ex.P/17 was also prepared. Sample was sent to the Forensic Science Laboratory and reports Ex.P/39 and Ex.P/40 were received from Forensic Science Laboratory. Ultimately after due investigation charge sheet was filed before the Special Court, NDPS Act Satna.

3. The appellant abjured his guilt. He has stated that nothing has been seized from him. He was called by the police officials but, he was not ready to open the door because there was possibility of some dacoity. After 2-3 days of the incident, Police arrested him and made a false case. In defence one Devsharan Tripathi (P.W.1) was examined who, informed the Court that the house in which the appellant was residing was in the name of Dasodiya, mother of the appellant and in that house there is no courtyard and there was no place where the cannabis could have 3 grown.

4. Learned Special Judge after considering the evidence of both the parties convicted and sentenced the appellant as mentioned above.

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

6. Learned counsel for the appellant has submitted that appellant is an old person of 65 years of age at the time of incident. At present he is 70 years old person who, remained in the custody from 23.9.2007 to 17.1.2008 and thereafter 30.9.2011 till today. Hence, he remained in custody for more than one year. Only four plants of Ganja (cannabis) were found in the house of the appellant and it is possible that appellant would not have any knowledge that those plants were of Ganja (cannabis). Under such circumstances where there is no minimum sentence prescribed, a sympathetic view may be taken against the appellant and his jail sentence may be reduced to the period for which he has already undergone in custody.

7. After considering the submissions made by the learned counsel for the parties it appears that learned counsel for the appellant does not want to challenge the conviction directed by the Special Judge. The appellant only challenges the sentence imposed upon him and therefore, there is no need to discuss about the merits of the case and conviction. So far as sentence is concerned it is apparent that the appellant is an old person of 70 years of age. His sons are residing away from his house. Only four plants were found in this house and it is possible that the appellant might have no knowledge that those plants were of cannabis and therefore, growing of those plants was an offence. Under such circumstances, looking to the number of plants and age of the appellant it is an appropriate case in which one year jail sentence may be the sufficient punishment for the crime committed by the appellant and therefore, jail sentence may be reduced to the period which the appellant has already undergone in custody but, no change in fine amount.

8. Under such circumstances, the appeal filed by the appellant is hereby partly allowed. Conviction directed by the Special Judge for offence punishable under Section 8/(20)(a)(i) of NDPS Act is hereby maintained but, the sentence is reduced to the period which he has already undergone in the custody but, no change in fine amount.

9. Registry is directed to issue a super session warrant in compliance to the present judgment so that the appellant may be released forthwith.

10. Copy of the judgment be sent to the trial Court with its record for information and compliance. (N.K.GUPTA) JUDGE 13 7.2012 bina

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com