

Ramu Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-28-2012

Appellant : Ramu

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Siddharth Datt

Judgement :

1 Cr. A. No.2383/2008 HIGH COURT OF MADHYA PRADESH JABALPUR
Criminal Appeal No.2383/2008 Ramu Vs. State of Madhya Pradesh

----- Present :
Hon'ble Shri Justice N.K. Gupta.

----- Name of
counsel for the parties: Shri Siddharth Datt, counsel for the appellant. Shri G.S.
Thakur, Panel Lawyer the respondent/State.

JUDGMENT

(Delivered on 28th day of September, 2012) The appellant has preferred this appeal against the judgment dated 7th October, 2008 passed by the Special Judge (N.D.P.S. Act), Balaghat in Special Case No.7/08, whereby the appellant was convicted for the offence punishable under Sections 8/20 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the N.D.P.S. Act') and sentenced for seven years' R.I. with fine of `50,000/-. In default

of payment of fine, he was directed to undergo for two year's R.I. in addition.

2. The prosecutions case, in short is that, on 18.3.2008 an intimation was received by the S.H.O. Police Station, Waraseoni District Balaghat that the appellant kept some Ganja in his shop. Various memos were prepared and intimation was recorded in the 2 Cr. A. No.2383/2008 Rojnamcha Sanah and Higher Authorities were also informed. S.D.O.P. Waraseoni was also informed by a mobile phone but due to urgency, no search warrant could be obtained. Two independent witnesses namely Dilip (PW-2) & Nand Kishore (PW-3) were called at Police Station. Thereafter, S.H.O. R.D. Dwivedi (PW-8) alongwith the police force and the witnesses went to the house of the appellant and he was given an opportunity that he could get his search in front of any Magistrate or Gazetted Officer. Thereafter, his search was taken. In search of his shop, some small sachets were found in a bag, which was kept in a rack. Those sachet were filled by Ganja. Total 10.6 kgs of Ganja was found. 100 gms. of Ganja was taken as a sample in the entire quantity of Ganja and three sachets were taken as samples and the appellant was arrested. Entire seized property was kept in the Malkhana and thereafter, it was sent to the Forensic Science Laboratory, Sagar for analysis. As per the report of Forensic Science Laboratory, the seized substance was found to be Ganja. After due investigation, a charge sheet was filed before the Special Judge, Balaghat.

3. The appellant abjured his guilt. He took a plea that he had no control over the shop from where, the alleged Ganja was found, whereas it was run by his mother. The appellant was residing in a separate house with his wife. In defence, Gopika Bai (DW-1), Rajendra (DW-2) and Nandlal Khandikar (DW-3) were examined.

4. On the basis of evidence adduced by both the parties, the learned Special Judge, Balaghat convicted the appellant for the 3 Cr. A. No.2383/2008 offence punishable under Sections 8/20 of N.D.P.S. Act and sentenced as mentioned above.

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

6. The learned counsel for the appellant has submitted that the appellant is in custody since his arrest and therefore, he remained in the custody for more than 4

years. Looking to the quantity of alleged Ganja, a harsh sentence is imposed upon the appellant. Hence, it is prayed that his jail sentence may be reduced to the period, which he has already undergone in the custody and fine amount may also be reduced so that the appellant can deposit the fine amount. Learned counsel for the appellant has placed his reliance upon the judgment passed by the Hon'ble Apex Court in case of Ghasita Sahu Vs. State of Madhya Pradesh. [AIR 200.SC 1425]..

7. On the other hand, learned Panel Lawyer has submitted that the sentence passed by the trial Court appears to be appropriate.

8. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, it appears that the appellant does not challenge the conviction directed against him and therefore, there is no need to discuss the matter on merits. So far as the sentence is concerned in the case of Ghasita Sahu (supra), the Hon'ble Apex Court reduced the period of sentence of the accused to the period, which he had already undergone in the custody, whereas he remained in the custody for four years and 17.750 kgs. of Ganja was found with that accused. In 4 Cr. A. No.2383/2008 the present case, approximately 10.6 kgs. of Ganja was found with the appellant and he remained in the custody for more than 4 years, therefore, in the light of the judgment passed by the Hon'ble Apex Court in the case of Ghasita Sahu (Supra), the jail sentence of the appellant may be reduced to the period, which he has already undergone in the custody and fine amount may also be reduced.

9. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction directed for the offence punishable under Sections 8/20 of the N.D.P.S. Act is hereby maintained, but the sentence is reduced to the period, which he has already undergone in the custody, whereas the fine amount is reduced from the sum of `50,000/- to `10,000/-. In default of payment of fine, the appellant shall further undergo for six months' R.I.

10. Since the appellant is in jail, therefore, the Registry is directed to issue a suppression warrant accordingly.

11. Copy of the judgment be sent to the trial Court alongwith its record for information and compliance. (N.K. GUPTA) JUDGE 28 09.2012 pnkj

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