

Mukesh Kumar @ Rajesh Vs. State

Mukesh Kumar @ Rajesh Vs. State

SooperKanoon Citation : sooperkanoon.com/1154053

Court : Delhi

Decided On : Jul-03-2014

Judge : S. P. Garg

Appellant : Mukesh Kumar @ Rajesh

Respondent : State

Advocate for Pet/Ap. : Shri. Ajay Verma

Judgement :

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

3. d July, 2014 + CRL.A. 49/2011 MUKHTIAR SINGH @ BABLOO Appellant Through : Mr.M.L.Yadav, Advocate. versus STATE GOVT. OF NCT OF DELHI Respondent Through : Mr.Lovkesh Sawhney, APP. + CRL.A. 439/2011 MUKESH KUMAR @ RAJESH Appellant Through : Mr.Ajay Verma, Advocate. versus STATE Respondent Through : Mr.Lovkesh Sawhney, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.GARG, J.

(ORAL) 1. Mukhtiar Singh @ Babloo (A-1) and Mukesh Kumar @ Rajesh (A-2) challenge the correctness and legality of a judgment dated 31.07.2010 of learned Additional Sessions Judge in Sessions Case No.7/07 arising out of FIR No.82/06 registered at Police Station Narcotics Branch by which they were held guilty under Sections 15/25 NDPS Act. By an order dated 06.08.2010, A-1 was sentenced to undergo RI for 15 years with fine ` 2 lacs under Section 15 NDPS Act; RI for ten

years with fine `1 lac under Section 25 NDPS Act. A-2 was awarded RI for 10 years with fine ` 1 lac each under Sections 15/25 NDPS Act. The substantive sentences were to operate concurrently.

2. The prosecution case as set up in the charge-sheet was that on 12.09.2006 at around 12.30 pm in front of CNG Outlet, Sanjay Gandhi Transport Nagar, the appellants were found in possession of 1200kg chura-post. recorded. Statements of witnesses conversant with the facts were Mandatory provisions of the Act to proceed against the appellants were complied with. After completion of investigation, a charge-sheet was submitted against both of them; they were duly charged under Sections 15/25 NDPS Act and brought to trial. In order to bring home the guilt, the prosecution examined 10 witnesses. In 313 statements, the appellants denied their involvement in the crime and pleaded false implication. The trial resulted in their conviction as aforesaid. Being aggrieved and dissatisfied, the appellants have preferred the appeals.

3. During the course of hearing of the appeals, Sh.M.L.Yadav and Shri Ajay Verma, counsel for appellant Nos.1 and 2 respectively, on instructions, stated at Bar that the appellants have opted not to challenge the findings of the trial court on conviction. They, however, prayed to take lenient view and modify the sentence order due to poor economic condition of the appellants. To this, learned APP for the State has no objection. Since the appellants have given up challenge to the findings on conviction under Sections 15/25 NDPS Act, as recorded by the trial court in view of the overwhelming evidence regarding recovery of contraband from their possession, their conviction is affirmed.

4. A-1s nominal roll dated 29.10.2013 reveals that he has suffered physical incarceration for about six years, three months and twelve five days till that date. Sentence order records that A-1 has a family consisting of wife and widow mother to support and there is none else to take care of them, he being the sole bread-earner of the family. A-1 was awarded enhanced punishment due to previous conviction in case FIR No.112/2002 under Section 15 NDPS Act registered at Police Station Cheeka, District Kaithal, Haryana in which he was awarded RI for ten years with fine `1 lac. It further reveals that in Crl.A.No.16 SB/2007, the High

Court of Punjab and Haryana modified the sentence for the period already undergone by him on 11.03.2011. By order dated 12.12.2012 A-1 was given interim bail for three months and there are no allegations of its misuse by him. Taking into consideration the facts and circumstances of the case and the mitigating circumstances, the sentence order is modified to the extent that substantive sentence under Section 15 NDPS Act would be RI for 12 years instead of RI for 15 years and the fine amount under Sections 15/25 NDPS Act would be one lac each and the default sentence for its non-payment will be SI for three months each.

5. A-2s nominal roll dated 22.08.2013 shows that he suffered physical incarceration for six years, eleven months and ten days as on 21.08.2013. He is not involved in any other criminal case and is not a previous convict. His overall jail conduct was satisfactory. Sentence order reveals that he was the sole bread earner of the family and was to take care of his family consisting of his wife and three minor daughters. He has undergone agony of trial/appeal for about 8 years. Considering the mitigating circumstances, the sentence order is modified to the extent that the default sentence of fine amount of `1 lac would be SI three months instead of SI for six months. Other terms and conditions of the sentence order are left undisturbed.

6. The appeals preferred by the appellants stand disposed of in the above terms. Trial Court record along with a copy of this order be sent back forthwith. (S.P.GARG) JUDGE JULY03 2014 sa

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