

Rajesh Singh Vs. the State of Bihar

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Court : Patna

Decided On : May-09-2007

Judge : Chandra Mohan Prasad, J.

Appellant : Rajesh Singh

Respondent : The State of Bihar

Disposition : Appeal dismissed

Judgement :

Chandra Mohan Prasad, J.

1. This appeal is against the judgment dated 27.1.2003/29.1.2003 (arising out of Brahmpur P.S. Case No. 06/01) whereby the appellant has been convicted under Section 20(B)(ii)(C) of the N.D.P.S. Act and sentenced to R.I. for ten years and a fine of rupees one lakh and in default of payment of fine to undergo R.I. for two years.

2. The appellant has been convicted and sentenced with regard to recovery of 90 kgs of ganja from a shop where the appellant was also seen and he tried to flee away but he was apprehended by the police. According to the case of prosecution, the officer-in-charge, Brahmpur P.S., received a secret information that some persons alighted from a train with ganja at Raghunathpur Railway Station and in order to move away they were in search of conveyance. On this information, the

officer-in-charge, constituted a raiding party and went to shop near the railway station and found some persons were in the shop and that they were trying to flee away but the appellant was apprehended and some others managed to escape away and that on being pointed out by the appellant 90 kgs of ganja kept in three cartoons were recovered from the shop. After performing necessary formalities regarding seizure, the appellant was arrested and sample of seized ganja was sent for chemical examination.

3. As many as five witnesses, including the eye-witness on the point of recovery as well as the I.O. and the chemical examiner were examined. On consideration of the evidence the trial court convicted the appellant and he was sentenced as above.

4. During hearing the learned Counsel for the appellant did not challenge the merit of the conviction and he confined his statement on the point of quantum of sentence, awarded to the appellant. Since, the merit of the conviction is not being challenged, there was no question to examine this aspect.

5. So far the question of the quantum of sentence is concerned, the learned Counsel for the appellant submitted that the appellant was remanded to judicial custody on 10.1.2001 and since then he is continuously in custody and thus he has remained in custody for a period exceeding six years.

6. Learned Counsel submitted that the appellant has been convicted under Section 20(B)(ii)(C) of the N.D.P.S. Act, 1985 which was amended by Act No. 09/01 which came into effect on 20.10.2001. It was further submitted that prior to this amendment. the Principal Act of, N.D.P.S. Act, 1985 was enforced and under the Principal I Act, the maximum sentence of R.I. for five years and a fine of Rs. 50000/- only could be awarded to a convict in such case.

7. There appears to be substance in the submission of learned Counsel for the appellant. Under Section 20(B) of the Principal N.D.P.S Act of 1985 and the maximum punishment for such offence was maximum R.I. for five years and maximum fine of Rs. 50000/-.

Section 20 read as bellow:

Section 20 Punishment for contravention in relation to cannabis plant and cannabis.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence, granted thereunder,

(a) cultivates any cannabis plant; or processes sells, purchases, transports, imports inter-State/exports inter-State or uses cannabis.

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State-exports inter-State or uses cannabis.

(c) where such contravention relates to ganja or the cultivation of cannabis plant, with rigours imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand;

8. Section 20 of the Principal Act 1985 was amended by Act No. 09 of 2001 which, came into effect on 2.10.2001. After this amendment the sentence for such offence was enhanced to rigours imprisonment for a term which shall not be less than ten years which may extend to 20 years and a fine which shall not be less than one lakh and which may extend to rupees two lakhs and that for reasons to be recorded in the judgment, the court may impose a fine exceeding rupees two lakhs as provided under Section 20(B)(ii)(C) of the N.D.P.S. Act 1985. After amendment the provision regarding applicability of amendment No. 09 of 2001 to pending cases is provided under Section 41 of the Amendment Act, 2001 which reads as follows:

Section 41 Application of this Act to pending cases, - (1) Notwithstanding anything contained in Sub-section (2) of Section 1 all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the Principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence: for this Act has not come into force.

Provided that nothing in this Section shall apply to cases pending in appeal.

(2) For the removal, of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

9. Thus from Section 41 of the Amendment Act 9 of 2001, it is clear that in I cases instituted earlier to come into force of the Amendment Act, the provision of Principal Act i.e. N.D.P.S. Act 1985 will apply with regard to the quantum of sentence.

10. It has already been mentioned that under Section 20 of the Principal N.D.P.S. Act 1985 the maximum punishment in such case was a sentence of imprisonment of five years and a fine of rupees fifty thousand. In the instant case the date of offence is 8.1.2001 on which date the Amendment Act No. 09 of 2001 which came into effect on 2.10.2001, and whereby the maximum sentence was enhanced, was not in force and on that date the Principal Act, 1985 was in operation and according to Section 20 of the Principal Act, 1985, the maximum sentence was R.I for five years and a fine of rupees fifty thousand only. No doubt the trial remained pending and it was concluded after the amendment of the Principal N.D.P.S. Act, 1985 but as already discussed above under Section 41 of the Amendment Act No. 09 of 2001, such pending cases had to be in accordance with the provision of the Principal N.D.P.S. 1985.

11. Accordingly, the instant case in so far as awarding the quantum of sentence was concerned, had to be disposed of under the provision of Principal N.D.P.S. Act, 1985. Under Section 20(b) of the Principal N.D.P.S. Act, 1985 the maximum sentence in such case was R.I. for five years and a fine of rupees fifty thousand only. Thus, the trial court committed an error in awarding sentence to the appellant under Section 20(b)(ii)(C) of the amended N.D.P.S. Act, 1985. The appellant could have been sentenced only under Section 20 of the Principal N.D.P.S. Act, 1985 which provides for rigorous imprisonment for a term which may extend to five years and a fine which may extend to rupees fifty thousand.

12. The appellant is in judicial custody since 10.1.2001 and thus he has remained in custody for a period exceeding six years.

13. In such view of the matters, I feel that the sentence of period has undergone by the appellant will meet the ends of justice and the sentence will also include the period in custody which would have been awarded to the appellant due to non-payment of fine. Thus, relaying on the provision under Section 20 of the Principal N.D.P.S. Act, 1985, the appellant is sentenced to the period already undergone. Accordingly, the conviction is maintained and the sentence as awarded by the Trial Court to the appellant is reduced to the period already undergone.

In the result, this appeal is dismissed with the modification in the sentence as indicated above.

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