

Shajahan vs State of Kerala

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Court : Kerala

Decided On : Aug-31-2021

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : CRL.A/85/2006

Appellant : Shajahan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943
AGAINST THE JUDGMENT DATED 23.12.2005 IN S.C.NO.794/2004
OF THE SESSIONS COURT, KOLLAM APPELLANTS/ACCUSED: 1
SHAJAHAN S/O SHAHUL HAMEED, RESIDING AT
OMANAPONNAPPAN'S PUTHUVAL PRAYIDATHIL, VEDIKUNNU
COLONY,, UDAYAMARTHANDAPURAM CHERRY, MUNDAKKAL
VILLAGE. 2 RAJENDRAN, S/O NANOO, RAJI BHAVAN
PARAMKIMAMVILA, NEAR EAST OF PANDARAKULAM, PEROOR
CHERRY, KOTTANKARA VILLAGE. BY ADV SRI.AJAYA KUMAR. G
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED

BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
BY SRI. SANGEETT RAJ, GOVERNMENT PLEADER THIS CRIMINAL
APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed challenging the conviction and sentence imposed in S.C No.794 of 2004 on the file of the Sessions Court, Kollam.

2. The gist of the prosecution allegation is that the

appellants/accused were found in possession of 56 grams and 49 grams of ganja respectively for the purpose of sale in violation of the provisions of the NDPS Act, on the southern side of the Kollam-Kannanalloor Public road, which is on the eastern side of Kollam Railway Station. Following investigation, a final report was filed. Following the framing of charges alleging the commission of an offence under Section 20(b)(ii)(B) of NDPS Act, the appellants/accused

pleaded not guilty. Following trial, considering the quantity involved, the trial court convicted the accused under Section 20(b)(ii)(A) of the NDPS Act and sentenced them to undergo rigorous imprisonment for a period of 6 months and to remit a fine of Rs.5,000/- each and in default thereof to undergo simple imprisonment for a period of 15 days under the aforesaid provision of the NDPS Act. Set off as permissible in law was also granted.

3. Heard the learned counsel appearing for the appellants and the learned Public Prosecutor for the State of Kerala.

4. The prosecution evidence consists of the evidence

of PWs 1 to 8. PWs 1 and 4 are independent witnesses. PW1 denied the prosecution case but admitted to his signature on Ext.P1 mahazar. Though he denied the statement given by him, he admitted his signatures both on the mahazar and on the sample packets of ganja, which was seized from the appellants/accused. The other independent witness namely, PW4 turned hostile

and denied his signatures and also denied that he had given any statement to the police. PW5 is the

Sub Inspector of Police who detected the offence. He has given evidence to suggest that the search was conducted in the presence of a gazetted officer and that the alleged quantity of ganja was seized from the appellants/accused. He has given evidence regarding the drawing of sample and the obtaining of signatures of independent witnesses on the samples and in the mahazar. The evidence tendered by PW5 is also supported by the evidence tendered by PW3, one of the police constables who was with PW5 at the time of the incident. The Manager of the Kollam Excise Divisional Office,

in whose presence the accused was searched, was examined as PW2. He has also affirmed in every detail the evidence

tendered by PW5 regarding the search and seizure.

forwarding of the sample for chemical analysis and regarding the contents of the chemical analysis report. A combined reading of the evidence tendered by PWs 2, 3 and 5 and the evidence given by PW1 would show that the prosecution has

succeeded in proving the case against

conviction of the appellants/accused under Section 20(b)(ii)

(A) of the NDPS Act, 1985 is justified.

5. The learned counsel for the appellants/accused would then contend that the sentence imposed on the appellants/accused is very harsh considering the fact that the

quantity seized from them was extremely small. He would also submit that the first appellant/first accused was in custody for 24 days at the investigation stage and that the second appellant/second accused was in custody during the investigation stage for a period of 36 days. He would therefore submit that the sentence imposed on the appellants/accused may be modified by restricting the sentence to one of fine alone as there was no mandatory imprisonment for an offence under

Section 20(b)(ii)(A) of the NDPS Act.

6. Having heard the learned counsel for the

appellants and the learned Public Prosecutor, I am of the opinion that considering the totality of the facts and circumstances of the case and considering the quantity of the contraband article seized from the possession of the appellants/accused, the sentence imposed on the appellants/accused can be modified by restricting the period of imprisonment to the period already undergone and by reducing the fine amount from Rs.5,000/- each to Rs.2,500/- each. Accordingly, this appeal is allowed in part. The conviction of the appellants/accused for having committed an offence under Section 20(b)(ii)(A) of the NDPS Act, 1985 is upheld. The sentence is modified as a sentence of imprisonment for the period already undergone at the investigation stage and by imposing a fine of Rs.2,500/- each on the appellants/accused. In default of payment of fine, the appellants/accused shall undergo simple imprisonment for a further period of one month. Sd/- GOPINATH P. JUDGE DK

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