

Basanti Lal Vs. State

Basanti Lal Vs. State

SooperKanoon Citation : sooperkanoon.com/48565

Court : Rajasthan Jodhpur

Decided On : Feb-27-2015

Appellant : Basanti Lal

Respondent : State

Judgement :

{1} IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
<><><> :Judgment: Basanti Lal versus The State of Raj.S.B.

Criminal Appeal No.163 of 2014 under Section 374(2) of Cr.P.C.against the judgment and order dated 26.02.2010 passed by the learned Special Judge, NDPS Cases, Chittorgarh in Sessions Case No.25/2005 whereby he has been convicted and sentenced for the offence under Section 8/18 of the NDPS Act.

<><><> Date of Judgment ::: February 27, 2015 Present Hon'ble Mr.Justice Banwari Lal Sharma Mr.RS Gill, for the appellant.

Mr.LR Upadhyay, Public Prosecutor.

By the Court: The appellant has preferred this appeal under Section 374(2) Cr.P.C.against the judgment and order dated 26.02.2010 passed by the learned Special Judge, NDPS Cases, Chittorgarh in Sessions Case No.25/2005 whereby he has been convicted for the offence under Section 8/18 of the NDPS Act and was sentenced to undergo 10 yeaRs.rigorous imprisonment with fine of Rs.1,00,000/-, in default whereof, to further undergo one year's rigorous

imprisonment.

{2} The brief facts of the case are that on 03.03.2005, on receiving information on telephone, the SHO, P.S.Kotwali, Chittorgarh reached at the Bus Stand, Chittorgarh, where a person having a bag in his hand was stopped and after giving his information and notice under Section 50 of the NDPS Act, he was searched.

On being searched, 9 packets containing opium, weighing 5.100 kg.

was recovered.

After taking samples, the packets and samples were seized and sealed and the appellant-accused was arrested and a case was registered and investigation commenced.

After completion of investigation, charge- sheet was filed against the appellant-accused.

To substantiate the charges, the prosecution examined as many as 15 witnesses and exhibited documents.

The appellant-accused was, thereafter, examined under Section 313 Cr.P.C., wherein he denied the prosecution case and stated that he has been implicated falsely and even after availing opportunity, did not lead any evidence in defence.

{3} The learned trial court, after trial, vide impugned judgment of conviction and order dated 26.02.2010, convicted and sentenced the appellant- accused as aforesaid.

Hence, this appeal.

I have heard Mr.RS Gill, learned counsel for the appellant-accused and Mr.LR Upadhyay, learned Public Prosecutor and perused the available record.

The learned counsel for the appellant-accused submitted that the appellant-accused has served the sentence of 10 yeaRs. Therefore, he does not press the conviction.

It was thus prayed that the sentence awarded for default of payment of fine may be made concurrent to the main sentence.

He has placed reliance upon the judgment of the Hon'ble Supreme Court delivered in Balwinder Singh versus Asstt.

Commissioner, Customs & Central Excise [2005 SC Candid 347]. Per contra, the learned Public Prosecutor supported the impugned judgment and order and submitted that this Court has no power to concurrent the sentence {4} and the offender should suffer imprisonment in default of payment of fine in excess to the main sentence.

I have considered the rival submissions made at the Bar.

Section 64 IPC clearly provides that the offender shall suffer imprisonment in default of payment of fine, which shall be in excess of the main sentence.

Section 64 IPC reads as under:- 64.

Sentence of imprisonment for non- payment of fine.- In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

.

In the case of Balwinder Singh (supra).the Hon'ble Supreme Court ordered to concurrent the sentence in default of payment of fine.

The Hon'ble Supreme Court has got special power under Article 142 of the Constitution {5} of India.

Whereas, as per the provisions of Section 64 IPC, the sentence in default of payment of fine cannot be ordered to run concurrently.

The term of imprisonment in default of payment of fine is not a sentence.

It is a penalty which a person incurs on account of non-payment of fine.

On the other hand, if sentence is imposed, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings.

However, the imprisonment ordered in default of payment of fine stands on a different footing.

When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount.

Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount.

In such circumstances, it is the duty of the court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine.

The provisions of Sections 63 to 79 of the IPC make it clear that an amount of fine should not be harsh or {6} excessive.

Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.

The Hon'ble Supreme Court, in the case of Shahejadh Khan Maheeb Khan Pathan versus State of Gujarat, [2013(1) SCC570], held as under:- Section 30(1)(b) Cr PC authorises the court to award imprisonment in default of fine up to one-fourth of the term of imprisonment which the court is competent to inflict as punishment for the offence.

However, considering the circumstances placed on behalf of the appellant-accused, viz., they are very poor and have to maintain their family, it was their first offence and if they fail to pay the amount of fine as per the order of the trial court, they have to remain in jail for a period of 3 years in addition to the period of substantive sentence because of their inability to pay the fine.

Serious prejudice will be caused not only to them but also to their family members who are innocent.

Therefore, ends of justice would be met if it is ordered that in default of payment of fine of Rs.1.5 lakhs, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the trial court and confirmed by the High Court.

.

In view of the foregoing discussion, this appeal is partly allowed.

The conviction and sentence recorded by the learned trial court is confirmed.

The order of payment of fine of Rs.1,00,000/- is also confirmed.

{7} However, the order of sentence in default of payment of fine is reduced to three months' rigorous imprisonment from one year's rigorous imprisonment.

Record of the learned trial court be sent back with a copy of this judgment.

[Banwari Lal Sharma],J.

/skm/

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