

Manish Misra Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-06-2003

Reported in : 2003CriLJ4085

Judge : Onkareshwar Bhatt, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21;
Code of Criminal Procedure (CrPC) , 1974 - Sections 229

Appeal No. : Crl. A. No. 2131 of 1997

Appellant : Manish Misra

Respondent : State of U.P.

Advocate for Def. : Rashid Jail, A.G.A.

Advocate for Pet/Ap. : R.B. Yadav and ;Kripa Shankar, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

Onkareshwar Bhatt, J.

1. This appeal is directed against judgment and order dated 15-9-1997 passed by the then VIth Addl. Sessions Judge, Agra in Special Case No. 123 of 1997. The

appellant has been convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, hereinafter referred to as the Act, and sentenced to ten years rigorous imprisonment and to pay a fine of Rs. one lakh. In default of payment of fine simple imprisonment for three years has been ordered.

2. Sri Rashid Jalil, learned Amicus Curiae, and the learned A.G.A. for the State have been heard.

3. Record of the case shows that on 15-4-1997 at 10.40 p.m. near railway bridge in Mokalla Shahganj police station Shahganj District Agra 24.5 Grams heroin was recovered from possession of the appellant, for the possession of which he had no licence. On Chemical Examination the contraband seized was found to be heroin.

4. The trial Court framed charge on 15-9-1997. The charge was read over to the appellant who accepted the charge. On the above acceptance, the appellant has been held guilty and sentenced to imprisonment as mentioned above.

5. It has been contended that the Court should not act upon the plea of guilty in serious offences but should proceed to take the evidence as if the plea had been one of not guilty and should decide the case upon the whole evidence including the accused plea. The offence under Section 21 of the Act is punishable with rigorous imprisonment for a term which shall not be less than ten years but which it may extend to twenty years and also with a fine which shall not be less than rupees one lakh, but which may extend two lakh rupees. The proviso to the section further lays down that the Court may impose a fine exceeding rupees two lakh for the reasons to be recorded in the Judgment. The punishment provided under the above Section is very harsh and the offence is of serious nature. The learned counsel of the appellant has placed reliance on the case of 'Major A. J. Anand v. State reported in AIR 1960 J and K 139 : 1960 Cri LJ 1453 which lays down that the plea of guilty only amounts to an admission that the accused committed the acts alleged against him, and not an admission of the guilt under a particular section of the Act. An accused person does not plead to a Section Of a criminal statute. He pleads guilty or not guilty to the facts, alleged to disclose an offence under, that Section.

6. Reliance has also been placed on the case 'Ramesan v. State of Kerala' reported in 1981 Cri LJ 451, wherein it has been held that the rule of practice adopted by the various High Courts in not acting upon a plea of guilty in cases of serious offences of murder is a rule of caution and prudence. An offence of murder involves not only the physical act of violence but also the mental element of intention or knowledge. A lay accused when he pleads guilty is likely to be more concerned with the physical act and may not advert to the various ingredients constituting the offence.

7. Reliance has further been placed on the case of 'Karam Singh v. State of Himachal Pradesh' reported in 1982 Cri LJ NOC 215 (Himachal Pradesh) which lays down that Section 229 confers a discretionary jurisdiction on the Court to accept a plea of guilty and to act upon it. This discretion has to be exercised with care and circumspection and on sound judicial principles, bearing always in mind the ultimate objective which is to do justice to the accused. The more grievous is the nature of the charge to which the accused is required to plead guilty, the more care and circumspection is expected to be exercised by the Court in accepting and acting upon the plea of guilty.

8. Section 229 of the Code of Criminal Procedure provides for conviction on the plea of guilty. It shows that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict; him therein. A bare perusal of the above provision shows that it is not obligatory on the Court to convict the accused on his plea of guilty but direction has been left with the Court to convict him thereon.

9. In the present case there is nothing on the record to show what exact words were used by the appellant when he pleaded guilty to the charge. Reliance has been placed on the case of 'Wazamao v. State of Nagaland' reported in 1983 Cri LJ 57 (Gauhati). In this case it has been held that the statements construed as plea of guilt if not fully, fairly and adequately recorded then the conviction based on such plea is liable to be set aside. As stated above, no statement of the appellant has been recorded at all what to say of its being fully, fairly and adequately been recorded.

10. This Court in the case of Ram Kumar v. State of U. P. (1998) 36 All Cri C 350 : (1998 All LJ 117 : 1998 Cri LJ 1267) although in somewhat different context has summarized the position that the Court should not act upon plea of guilty in serious offences. In Ram Kumar's case the accused pleaded not guilty to the charge which was framed on 18-8-1989. The accused, before the recording of evidence of any prosecution witness, on 16-1-1990 made confession which was recorded and was sentenced to imprisonment for life.

11. Reference has also been made to the case of Dalli v. Emperor reported in AIR 1922 All 233 (1) : (1924 (23) Cri LJ 283). In the case of Dalli (supra) it was observed that murder is a mixed question of fact and law and unless the Court is perfectly satisfied that the accused knew exactly what was necessarily implied by his plea of guilty, the case should be tried.

12. The above decisions of various High Courts and of this Court also show that in cases of serious offences the Court should not act upon the plea of guilty. There can be no dispute that the offence under Section 21 of the Act is of serious nature providing deterrent punishment and as such the Court should not act upon the plea of guilty but to proceed to decide the case on merit after taking the evidence.

13. In view of the above discussion, the appeal is allowed, the order of conviction and sentence passed against the appellant is set aside and the case is remanded back to the trial Court. The trial Court is directed to proceed with the case in accordance with law.

14. Sri Rashid Jalil. Amicus Curiae, who has argued the case on behalf of the appellant, will be paid a sum of Rs. 2,500/- (Rupees two thousand five hundred only) as his fees.