

Rajesh Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-27-2002

Reported in : 2002CriLJ2680

Judge : B.K. Rathi, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 1(2), 8, 20, 36A and 41; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 4, 4(1) and 4(2); Indian Penal Code

Appeal No. : Criminal Misc. Appln. No. 1239 of 2002

Appellant : Rajesh Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Manish Tiwary and ;Ashwini Kumar Awasthi, Advs.

Disposition : Petition allowed

Judgement :

ORDER

B.K. Rathi, J.

1. The petitioner is facing trial in special case No. 157 of 1999, under Sections 8/20 N.D.P.S.Act before the Special Judge, N.D.P.S. Act, Varanasi. According to the prosecution case, the applicant was found in possession of 1 Kg. of contraband ganja. The applicant moved an application before the learned Special Judge, N.D.P.S.Act that the case is triable by the Magistrate and therefore, it may be sent back to the Magistrate for summary trial of the applicant in accordance to the provisions of N.D.P.S.Act as amended by Act No. 9 of 2001 which have been enforced w.e.f. 27-09-2001 and Cr.P.C. The application of the petitioner has been rejected by the impugned order dated 11-02-2002. Aggrieved by it, the present petition has been preferred.

2. I have heard Sri Manish Tiwary, learned counsel for the petitioner and the learned A.G.A. I have also perused the provisions of amending Act No. 9 of 2001 which have been enforced from 27-09-2001.

3. The original provisions of the N.D.P.S.Act, 1985 has been substantially amended by the amending Act No. 9 of 2001. Section 36A of the original Act provided for trial of offences under the Act by the Special Courts. This section has been amended and amended Sub-clause 1(a), which is relevant for the purpose of this petition is extracted below:

Section 36A: 'Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)- (a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

Sub-clause (5) of the said section is also relevant and is extracted below:

Notwithstanding anything contained in the Code of criminal Procedure, 1973 (2 of 1974), the offences punishable under this act with imprisonment for a term of not more than three years may be tried summarily.

4. From the perusal of the above provision alongwith Section 4 of the Cr.P.C, it is clear that in case the punishment provided for the offence under the N.D.P.S.Act is more than three years, the offence is triable by Special Court and to that extent the provision of Section 36A N.D.P.S. Act over ride the provisions of the Cr.P.C. The trial for offences under the N.D.P.S.Act which are punishable for imprisonment of three years or less should be a summary trial by the Magistrate under Chapter XXI of the Cr.P.C. For the purpose to further clarify the position of law it is also necessary to refer to Section 4 Cr.P.C, which is as follows:

Section 4: Trial of offences under the Indian Penal Code and other laws- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. The above Clause (2) therefore, show that all the offences should be tried according to the provisions of Cr.P.C. except where there is special provision in any other enactment regarding the trial of any offence. Section 36A of N.D.P.S.Act only provide for trial by Special Courts for offences punishable under N.D.P.S.Act with imprisonment for a term of more than three years only. Therefore, if an offence is punishable with imprisonment for a term upto three years, it shall have to be tried by the Magistrate in accordance with the provision of Section 4(2) Cr.P.C.

6. It will not be out of place to mention that after the enforcement of amending Act No. 9 of 2001 this procedure for trial has to be followed for all the offences irrespective of the date of commission of the offence. It is basic principle of law that amendment in procedural law will apply to the pending cases also. Not only this there is also specific provision regarding it in amending Act No. 9 of 2001. Section 41 of the Act provide 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:

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.

7. Accordingly, the provisions of the amending Act No. 9 of 2001 will also apply to the pending cases and even if the offence was committed before the enforcement of Act No. 9 of 2001, the same shall be tried in accordance with the amended provision.

8. Now the next question that arise for decision is as to what is the punishment provided for the present offence under amended N.D.P.S.Act. It appear that the punishments for recovery of Narcotic drugs or Psychotropic Substance has been divided in 3 categories as mentioned in the table given at the end of the Act. in this table 2 columns Nos.5 and 6 are material, the first is regarding the small quantity and the other is regarding commercial quantity. The third category will follow from this table where the quantity is above small quantity but is less than commercial quantity. The ganja has been given at time No. 55 of this table. 1000 gm of ganja has been categorised as small quantity and 20 Kg. of ganja has been categorised as commercial quantity. Accordingly to the third category in respect of recovery of ganja is above 1 Kg. and below 20 Kg.

9. For the recovery of ganja the punishment has been provided in Section 20 of the Act which deals with cannabis plant and cannabis. According to Clause ii (A) of the said section if the accused is alleged to have found in possession small quantity, he is liable to punishment of rigorous imprisonment for a term of only six

months or with fine which may extend to Rs. 10,000/- or with both.

10. It may also be pointed that Clause (b) of Section 2 defines ganja which is flowering of fruiting tops of the cannabis plant.

11. The result of the above analysis is that for the offence of recovery of ganja upto 1000 gms. the punishment provided by the amending Act is only six months R.I. and a fine which may extend to Rs. 10,000/- or with both. Therefore, in accordance with 36-A of the Act and Section 4(2) Cr.P.C. the said offence in this case is triable by the Magistrate as summary trial under Chapter XXI of the Cr.P.C.

12. In view of the above, the learned Special Judge has erred in rejecting the application of the applicant.

13. The petition is accordingly allowed and it is ordered that the offence alleged against the applicant is triable by the Magistrate. The Sessions Judge, Varanasi is therefore, directed to pass an order for transfer of this case to some Judicial Magistrate/ Additional Chief Judicial Magistrate/Chief Judicial Magistrate for trial in accordance with the provisions of the N.D.P.S. Act and Cr.P.C. as pointed above.

14. This question is of general importance and large number of trials under N.D.P.S. Act are pending before Special Judges. Therefore, let the copy of this judgment be sent by the Registrar General to all the Sessions Judges in Uttar Pradesh for passing orders regarding pending case in the light of the above judgment.

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