

Gopal Vs. State of Madhya Pradesh

Gopal Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/508315

Court : Madhya Pradesh

Decided On : Jul-14-2008

Reported in : 2008(5)MPHT144

Judge : S.L. Kochar, J.

Appellant : Gopal

Respondent : State of Madhya Pradesh

Judgement :

S.L. Kochar, J.

1. The appellant has filed this appeal, challenging his conviction under Section 8/18 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') and sentence of R.I. for 10 years with fine of Rs. 1,00,000/- (Rupees One Lakh Only) and in default of payment of fine appellant was further sentenced to undergo one year additional R.I., passed by learned Special Judge (under NDPS Act), Mandsaur, District Mandsaur in Special S.T. No. 27/2005, judgment dated 28-2-2007.

2. Learned Counsel for the appellant does not dispute seizure of 2.500 Kg. Opium from the possession of the appellant but he has submitted that learned Trial Court has not pointed out in the impugned judgment specifically whether the appellant is convicted for commercial quantity or non-commercial quantity because in

commercial quantity the minimum jail sentence prescribed is 10 years and minimum fine prescribed is Rs. 1,00,000/- whereas for non-commercial quantity the sentence may extend upto 10 years and fine may extend upto Rs. 1,00,000/-. According to learned Counsel, the seized quantity would fall under non-commercial quantity punishable under Section 8/18(c) of the Act, as per definition under Section 2, Sub-section (vii)(a) read with notification made by the Central Govt. dated 2nd October, 2001.

3. Having heard the learned Counsel for the parties and after perusing the entire record, it is evident that learned Trial Court has not mentioned specifically in the impugned judgment whether appellant has been convicted for possessing commercial quantity or non-commercial quantity. Commercial quantity is defined under Section 2, Sub-section (vii)(a) of the Act as under:

(vii a) 'commercial quantity', in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.

4. According to the notification dated 2nd October, 2001, in the table commercial quantity of Opium is mentioned in item No. 92 as 2.500 Kg. If more than this quantity would have been seized from the possession of the appellant, the appellant would be responsible for punishment under Section 8/18(b) of the Act. Since, 2.500 kg. Opium has been seized from the appellant, therefore, his case would fall under Section 8/18(c) of the Act as per definition of commercial quantity and under Section 8/18(c) minimum jail sentence is not prescribed. The sentence may extend upto 10 years and fine may extend upto Rs. 1,00,000/-. Learned Trial Court has not pointed out any circumstances for imposition of maximum jail sentence and fine amount in the impugned judgment whereas according to learned Counsel for the appellant, appellant is a first offender and young man of 28 years having responsibility to maintain his family consisting wife, children and parents. He was a small milk vendor by occupation. On all these grounds learned Counsel prays for imposition of lesser sentence than the maximum.

5. Looking to the facts and circumstances of the case and arguments advanced by learned Counsel for the appellant, this Court is of the view that the ends of justice

would be served to sentence the appellant under Section 8/18(c) of the Act to R.I. for 7 years and fine of Rs. 1,00,000/- in default of payment of fine he shall undergo R.I. for one year.

6. In the result, this appeal is allowed in part in the term indicated hereinabove.

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