

Parkash Singh Vs. State

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Court : Delhi

Decided On : Feb-20-1991

Reported in : 43(1991)DLT532

Judge : V.B. Bansal, J.

Acts : Opium Act - Sections 9(1)

Appeal No. : Criminal Revision Appeal No. 75 of 1979

Appellant : Parkash Singh

Respondent : State

Advocate for Pet/Ap. : R.N. Chawla and; B.D. Batra, Advs

Judgement :

V.B. Bansal, J.

(1) By way of this Revision Petition Parkash Singh has challenged his conviction under section 9(1)(a) of the Opium Act and sentence of rigors imprisonment for three months with a fine of Rs. 500.00 or in default to further undergo rigorous imprisonment for one month. He was convicted on 21st February, 1979 and the order of sentence was passed on 5th March, 1979 by a Metropolitan Magistrate. His appeal was also dismissed by an Addl. Sessions Judge Delhi on 9th April, 1979.

(2) Briefly stated the facts leading to the filing of this revision petition are that on 16th November, 1977, S.I. Rajpal Singh, who was accompanied by police officials Dewan Singh, Bhopal Singh and Devinder Nath, while on patrol duty, organized a raiding party and from the military colour 'Jhola', which the petitioner was carrying, 450 gms of opium besides 9.100 kg. of Charas was recovered. 50 gms was separated as sample and thereafter the sample and the remaining opium were converted into separate parcels, and sealed with the seal of LSY. These were taken into possession .after preparing seizure memo and on the basis of the Ruqa sent by S.I. Rajpal Singh, Fir 1071 of 1977 was recorded at police station Punjabi Bagh. The sample on analysis at Cfsi R.K. Puram, was found to be of opium and the petitioner was thus challaned for being found in possession of opium.

(3) The plea taken by the petitioner during the trial was of complete denial. Believing the prosecution story the petitioner was convicted and awarded sentence as referred to above. The order of conviction and sentence were affirmed on appeal by the appellate court.

(4) I have heard Shri R.N. Chawla, learned counsel for the petitioner and Shri B.D. Batra, learned Standing Counsel for the State. I have also gone through the records.

(5) Learned counsel for the petitioner has submitted that the petitioner does not contest his conviction recorded by the trial court and affirmed on appeal by an Addl. Sessions Judge. I have otherwise also perused the statements of the witnesses with the assistance of the learned counsel for the parties and found that the conviction of the petitioner is based upon valid and legal evidence and the same is hereby confirmed.

(6) Learned counsel for the petitioner has submitted that the petitioner does not want to challenge the findings of the two courts below holding him guilty of the offence. He has submitted that the petitioner was aged about 29 years at the time of incident and that he is now about 42 years of age and is the sole-earning member of the family comprising of his wife and five children. He has also submitted that the petitioner has not been involved in any other case and is now leading peaceful life running his business. He has also submitted that the

petitioner has been in jail for about 27 days. A prayer has, therefore, been made that he may not be sent to jail after this long gap which would upset the whole family. He has also submitted that instead of substantive sentence of imprisonment, the amount of fine may be enhanced. A perusal of the file shows that the petitioner is not a previous convict, and there is no dispute to the submission made by learned counsel for the petitioner with regard to the number of family members. The present revision petition was filed on 26th April, 1979 when the petitioner was ordered to be released on bail. The offence under Section 9(1)(a) of the Opium Act is punishable with imprisonment which may extend to three years with or without fine. The petitioner has been in custody for a period of about 27 days.

(7) Considering all the facts and circumstances I am of the view that ends of justice would be met if instead of sending him to jail now, the amount of fine is raised to Rs. 1,500.00 .

(8) As a result the revision petition is accepted in part. The order of conviction is maintained. Order of sentence, is, however, modified. The petitioner is sentenced to imprisonment for the period for which he had been in jail and fine Rs. 1,500.00 . In case of default is the payment of fine, the petitioner would suffer rigorous imprisonment for six months. The fine be deposited within one month from today.

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