

**Sultan Vs. State**

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**Court :** Delhi

**Decided On :** Dec-12-2003

**Reported in :** 2004(73)DRJ460

**Judge :** O.P. Dwivedi, J.

**Acts :** [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 21

**Appeal No. :** Criminal Appeal No. 627 of 2001

**Appellant :** Sultan

**Respondent :** State

**Advocate for Def. :** S.K. Kapoor, Adv.

**Advocate for Pet/Ap. :** Sumeet Verma, amices Curia

**Judgement :**

**O.P. Dwivedi, J.**

1. This appeal is directed against the judgment of conviction dated 26.3.2001 and order of sentence dated 29.3.2001 whereby the appellant was convicted under Section 21 of the NDPS Act and sentenced to undergo RI for 10 years fine of Rs. 1 lakh in default RI for one year.

2. The case of prosecution is that on 26.5.99 at about 1.05 p.m. when appellant was apprehended and searched on the basis of secret information he was found in possession of 5 gram of smack. Appropriate charges under Section 21 of the NDPS Act were framed against the accused to which he pleaded not guilty. After considering the evidence led by the prosecution and other material on record, learned Additional Sessions Judge held the charges against the appellant proved and accordingly convicted and sentenced him as stated earlier.

3. In appeal learned counsel for the appellant Mr. Sumeet Verma, Advocate, has not challenged the conviction of the appellant. He has pleaded for leniency in the matter of sentence in view of amended provisions of Section 21 of NDPS Act. This amendment which came into force on 2nd October, 2001, reads as under:-

21. Punishment for contravention in relation to manufactured drugs and preparations. Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted there under, manufacturers, possesses, sells, purchases, transport, Imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees:

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

4. The quantity of smack i.e. 5 gram recovered from the appellant does not fall in the category of small quantity but is less than the commercial quantity so in view of

the amended section 21(b) of NDPS Act punishment may extend up to 10 years and fine which may extend to Rs. 1 lakh. In the amended Act, the minimum sentence of 10 years RI and fine of Rs. 1 lakh is prescribed only for offenders who are found in possession of commercial quantity of smack which is 250 gram minimum. Learned counsel for the appellant vehemently pressed for reduction of sentence in view of lesser punishment prescribed by amending Act, 2001. In the case of Gian Singh v. State of Punjab, 1999 SCC (Cri.) 1512, the Apex Court took into consideration the provisions of TADA Act, 1985 which diluted the sentence for offence under Section 3(2) of TADA Act, 1985 from extreme penalty of death to life imprisonment. While commenting on the desirability of extending the benefit of subsequent legislation which down grades the harshness of punishment, the Apex Court in para 32 observed as under:-

32. What is the jurisprudential philosophy involved in the second limb of Clause (1) of Article 20 of the Constitution? No person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

It is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribes, and no ex post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.'

5. Learned counsel for the appellant has brought to my notice other decisions of this Court namely Ginni Devi v. State, Criminal Appeal No. 713/2000 decided on 5th March 2002; Hari Om v. State, 2002 6 AD (Del) 921 and Tahseen v. State, Cri. Appeal No. 234/1998 wherein different benches of this Court have taken a consistent view that the benefit of amending provisions of NDPS Act should be extended to the people who have been awarded harsher punishment as offence was committed when the old Act was in force.

6. In the present case the appellant has already undergone about five years of incarceration for possession of 5 gram of smack. therefore, taking the beneficial provisions of the amended NDPS Act, the sentence is reduced to the period already undergone. He be set at liberty if not wanted in any other case. Appellant be informed through Jail Superintendent.

7. Appeal stands disposed of.

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