

Hari Om Vs. State

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Court : Delhi

Decided On : Sep-05-2002

Reported in : 2003CriLJ979; 100(2002)DLT225; 2002(84)ECC768

Judge : J.D. Kapoor, J.

Acts : Narcotic Drugs And Psychotropic Substances Act - Sections 18

Appeal No. : Crl. A. 531/2001 and CM 1672/2001

Appellant : Hari Om

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : Sumeet Verma, Adv

Disposition : Appeal dismissed

Judgement :

J.D. Kapoor, J.

1. This is an appeal against the judgment dated 11th December, 2000 whereby appellant was convicted for the offence under Section 18 of NDPS Act for being found in possession of 1 k.g. of opium and the order of sentence dated 13th December, 2000 whereby he was awarded 10 years RI and a fine of Rs. 1 lakh

and in default of payment of fine to undergo simple imprisonment for a period of two years.

2. Admittedly appellant was arrested on 21.7.1999 and since then he is in jail and serving sentence. Learned counsel for the appellant Mr. Sumeet Verma has fairly conceded that conviction be maintained but has confined his arguments on the quantum of sentences. Mr. Verma seeks to avail benefit of amended provisions of Section 18 of NDPS Act which provides that if a person is found to be in possession of a small quantity, he can be visited with sentence for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. He further contends that it is only in a case where the quantity is a commercial quantity that the minimum sentence of 10 years which is extendable to 20 years and fine of Rs. 1 lakh which is extendable to 2 lakh which is awardable. In any other case the sentence can be extended to ten years with fine which may extend to Rs. one lakh. The amended provisions need to be reproduced. It reads as under:-

'18. Punishment for contravention in relation to opium poppy and opium:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted there under, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium 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 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 which may extend to two lakh rupees:

Provides that the Court may, for reasons to be recorded in the judgment impose a fine exceeding two lakh rupees; (c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

3. Mr. Anil Soni, learned APP contends that since this provision came into existence in October, 2001 whereas the offence was committed in the year 1999, the benefit of it is not extendable to the appellant. On the contrary, Mr. Verma contends that benefit of amended provisions has to be extended to all those cases where appeals are pending and this court has taken a consistent view that the appeal is a continuation of trial and thereforee advantage of amended provision has to be given to the accused. There is force in the argument of Mr. Verma.

4. The Supreme Court in State v. Gian Singh 1999 SCC (Cri) 1512 has also taken a view that if any subsequent legislation reduces 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. The observations of the Supreme Court in this regard are as under:-

'It is the fundamental right of every person that he should not be subjected to greater penalty 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. There is unvarying unanimous view that appeal is continuation of the trial as until and unless the judgment of conviction and order of sentence receives finality and comes into operation, the statute of the day is applicable unless specifically provided to the contrary. Argument of the learned APP would have some force. Had the convict whose conviction and sentence had attained finality prior to the amended legislation approached the court to re-open his case for the purpose of sentence to avail the benefit of amended legislation. Otherwise all those who are still awaiting judicial verdict are entitled to the benefit of reduced sentence.

6. As regards the contention of learned counsel for the appellant that quantity recovered from the appellant is less than commercial value and thereforee be treated as small quantity as contemplated in Sub-clause (a) does not cut ice. By

no stretch of imagination quantity of 1 K.G. against commercial quantity of 2.5 K.G. can be termed as 'small quantity'. However, Clause (c) of Section 18 is a relevant clause which appellant can take advantage of. Any quantity which is not a small quantity but is less than commercial quantity comes within the zone of sentence as provided in Sub-clause (c) of Section 18. In that event sentence can extend to 10 years with fine which may be extended to Rs. 1 lakh which means that provision of minimum sentence of 10 years is not applicable in such cases.

7. However, in view of the fact that appellant has already undergone more than three years and one month and the quantity was less than half of the commercial quantity though it was not a small quantity, the interests of justice would be met if he is awarded substantive sentence of three years R.I. and fine of Rs. 25000/- in default of which the appellant shall undergo one month simple imprisonment.

8. With this modification, appeal stands dismissed.

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