Vijendra @ Behra Vs. State

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Court : Delhi

Decided On : Apr-29-2010

Judge : S.L. Bhayana, J.

Acts : Narcotic Drugs and Psychotropic Substances Act - Sections 20 and 50

Appeal No. : Crl.A. No. 841/2005

Appellant : Vijendra @ Behra

Respondent : State

Advocate for Def. : Naveen Sharma, Adv.

Advocate for Pet/Ap. : Imtiaz Ahmed,; Naghma Imtiaz and; Kamran Malik, Advs.

Disposition : Appeal dismissed

Judgement :

S. L. Bhayana, J.

1. By this judgment, I will dispose of this appeal filed by the appellant against the judgment passed by the learned Trial Court dated 12.9.2005 wherein the learned Additional Sessions Judge has convicted the appellant and sentenced the appellant under Section 20 NDPS Act to undergo ten years RI and to pay a fine of Rs. one lac and in default of payment of fine, the convict would further undergo RI

for two years.

2. It is the case of the prosecution that secret information was received at the police station on 09.4.2004 by SI Ramesh Dutt from one informer that one boy namely Vijender aged about 24-25 years who is indulging in sale of Ganja would come from Jahangir Puri via Railway Track No. 7 towards Shalimar Bagh and he was carrying large quantity of Ganja with him. On receiving this secret information, a raiding party was organized and accordingly the appellant was apprehended by the police on 09.4.2004 at 7.30 PM. The appellant was found carrying 20 kgs of Ganja in a white color plastic bag which was seized by the police.

3. The charge was framed against the accused under Section 20 of NDPS Act to which he pleaded not guilty and claimed trial. The prosecution has examined seven witnesses in support of its case. PW6 SI Ramesh Dutt has deposed before the court that on 09.4.2004 he was posted at Shalimar Bagh Police Station when he received secret information from the informer that one boy namely Vijender who was indulging in the sale of Ganja would come nearby Railway Track No. 7 towards Shalimar Bagh carrying large quantity of Ganja with him. He organized a raiding party comprising of PW1 Const. Rampal and PW2 Const. Kaptan Singh. The raiding party along with the informer went to the alleged spot and the SI requested 5-7 public persons to join the raiding party but none agreed. At about 7.20 PM nakabandi was done. The appellant was seen coming from the railway track at about 7.30 PM and he was carrying white colour plastic bag on his shoulder. On pointing out by the informer towards the accused, he was apprehended by him and his raiding party. On personal search of the accused, Ganja was recovered from the bag of the appellant which he was carrying. A notice under Section 50 of NDPS Act was served upon the accused by him and then he weighed the Ganja which was found to be 20 kgs. Out of 20 kgs of Ganja, 1 kg Ganja was separated as sample and kept in a separate parcel. The remaining Ganja was kept in the plastic bag in which it was recovered and then it was converted into a cloth parcel. He then sealed both the parcels with his seal of RDS and filled in FSL form and affixed his seal of RDS over it and handed over the seal to PW2 Const. Kaptan Singh.

4. I have also gone through the statement of PW2 Const. Kaptan Singh who has supported the case of prosecution and also supported the version given by PW6 SI Ramesh Dutt. He has further deposed that he collected one parcel duly sealed with the seals of RDS and BRM and the FSL form from the MHC(M) of Shalimar Bagh Police Station and deposited the same with seals intact in the office of FSL, Madhuban Chowk.

5. PW5 ASI Rampal has deposed before the court that on 09.4.2004 at about 10.30 PM, PW1 Const. Rampal handed over to him the original rukka and the copy of the FIR of this case and he along with the constables reached the place of apprehension of the accused.

6. PW7 HC Subhash Chander has deposed that on 04.4.2004, SHO Insp. B.R. Mann deposited in the malkhana, two parcels and FSL form duly sealed with the seals of RDS and BRM and its entry was made in malkhana register No. 19 at Sr. No. 2418.

7. It is argued by learned Counsel for the appellant that one kg. Ganja was separated by the SI Ramesh Dutt in a separate sealed parcel and sent to the CFSL for examination but only 754 gms. of Ganja was received from the CFSL instead of one kg., as the report of the CFSL dated 14.7.04 clearly says that the weight of the sample was 754 gms. and that the quantity was tampered by the raiding party at the time of separating the sample. On the other hand, learned APP for the State has submitted that only 754 gms. of sample was received from the CFSL out of one kg., as the rest of the quantity was used in the examination of Ganja by the CFSL and there is nothing unusual in the same and there is no tampering in the weight of Ganja seized by the raiding party.

8. Learned Counsel for the appellant further argued that no public witnesses have been joined by the IO in this case at the time of personal search of the appellant nor the recovery of Ganja has been witnessed by any public person. I have gone through the testimony of PW6 SI Ramesh Dutt wherein he has clearly deposed that after reaching at the spot, he requested 5-7 public persons to join the raiding party but none agreed. PW1 & PW2, Const. Rampal and Const. Kaptan respectively have also further deposed in their testimonies that PW6 requested

several passersby to join the raiding party but none agreed and left the spot showing their inability. I have also gone through the cross-examinations of these witnesses but no serious discrepancy has been pointed out in the cross-examination which could discredit the testimony of these PWs. The case of the prosecution can't be thrown away simply because no public witness has been joined at the time of recovery of the ganja. This view finds supports from the observations made by Supreme Court in P.P. Beeran v. State of Kerala : 2001 (9) SCC 571, The Supreme Court observed that the testimony of the police officials cannot be rejected on the ground that police official was the sole witness of recovery of ganja and the public witness, who was examined, turned hostile. The Supreme Court observed that the conviction can be based on the sole testimony of a Sub-Inspector if the other circumstances existed, shall corroborate the testimony. This court in Jawahar v. State Crl. Appeal No. 690/2000 deiced on 23.03.2007 observed as under:

to associate with investigation is harassment of the public witness that takes place in the courts. Normally a public witness should be called once to depose in the court and his testimony should be recorded and he should be discharged. But experience shows that adjournment is given in criminal cases on all excuses and if the adjournment is not given. It is considered as a breach of the right of hearing of the accused. Theses adjournments are specially taken by the counsel As far as non association of public witness at the time of recovery is concerned, I consider that this is not an infirmity sufficient to throw out the case of the prosecution. It is very hard these days to get association of the public witnesses in criminal investigation. Investigation itself is a tedious process and a public witness, who is associated, has to spend hours at the spot. Normally, nobody from public is prepared to suffer any inconvenience for the sake of society. The other reason for the public witness not readily agreeing s for accused persons, when witnesses are parents, just to see that witnesses get harassed by calling them time and again. The excuses normally given in court are: the counsels having urgent personal work, left the court, death of some near relatives etc, the counsel being busy in arguing other matter in other court or cross examining other witnesses in some other court. This attitude of the courts of sending witness back is a major cause of harassment which discourages public from associating in the investigation of any

case. Since the police if faced with this handicap, the police cannot be blamed for not associating public witness. There is no presumption that the police witnesses are not credible witnesses. The testimony of every witness, whether from public or police, has to be judged at its own merits and the court can believe or disbelieve a police witness considering the intrinsic value of his testimony. Police witnesses are equally good witnesses and equally bad witnesses as any other witnesses and the testimony of police witnesses cannot be rejected on the ground that they are official witnesses.

I, therefore, find that non-joining of public witness could not be a ground to set aside the conviction.

9. Learned Counsel for the appellant further submits that the appellant is a very poor person and he cannot deposit the fine of Rs. 1 lac imposed upon him. It is further submitted on behalf of the appellant that he has already undergone 6 years in jail and that he may be ordered to be released for the sentence already undergone by him. I have gone through the provisions of Section 20 of NDPS Act, which reads as under:

Section 20. Punishment for contravention in relation to cannabis plant and cannabis.- Whoever, in contravention of any provisions of this act or any rule or order made or condition of licence granted there under:

(a) cultivates any cannabis plant, or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-state or uses cannabis, shall be punishable-

(i) where such contravention relates to Clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees, and

(ii) where such contravention relates to Sub-clause (b):

(a) and involves small quantity, with rigorous imprisonment for may be extended to ten thousand rupees, or with both;

(b) and 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) and 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 all also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees; Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding, two lakh rupees.

10. As per the provisions of Section 20(b)(ii)(c) of the NDPS Act, the minimum sentence which can be awarded is not less than ten years and the minimum fine is Rs. one lakh. In the present case, learned trial Court has convicted the appellant under Section 20 of the NDPS Act and sentenced him to undergo RI for ten years and fine of Rs. one lakh. In my opinion the learned trial Court has awarded the minimum sentence as prescribed under the law. This sentence cannot be reduced by this Court.

11. Keeping in view the above observations, I do not find any merit in the appeal. The same is dismissed.