

State of H.P. Vs. Sher Singh

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Court : Himachal Pradesh

Decided On : Dec-26-2008

Reported in : 2009(1)ShimLC395

Judge : R.B. Misra and; Surjit Singh, JJ.

Appellant : State of H.P.

Respondent : Sher Singh

Disposition : Appeal dismissed

Judgement :

Cr.M.P. (M) No. 1016/2008

1. Heard For the reasons stated in the application, delay condoned. Application is disposed of.

Cr. A. No. 531/2008

2. Heard and cone through the record. State has appealed against the judgment of Special Judge, Mandi, whereby respondent Sher Singh, who was tried for offence, under Section 20(ii)(B) for possessing 250 grams of charas, has finally been convicted of offence punishable, under Section 20(ii)(A) and sentenced to undergo imprisonment for the period for which he had already been in custody, i.e. 12 days and to pay fine of Rs. 2000/-, in default of payment of fine to undergo simple

imprisonment for three days.

3. Trial Court's judgment is sought to be assailed on two grounds. First, that the quantity recovered from the respondent was more than small and, therefore, he was liable to be convicted under Clause (B) of Section 20(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985, instead of Clause (A) of the said section and secondly, the sentence awarded is inadequate. The percentage of resin in the recovered quantity, according to the report of the Chemical Examiner, was 32.03%. The Learned Trial Court on the basis of the percentage of resin concluded that the charas contained in the recovered stuff was only to the extent of 80.7%, which being less than 100 grams, was small quantity. In re-working the quantity, on the basis of percentage of resin content, the trial Court has placed reliance upon this Courts' judgments *Gulam Rasool v. State of H.P.* 2007 Supp. (Cur. LJ (HP)), *Ramesh Lal v. State of H.R* 2007 Supp. Cur. LJ 460 (HP) and *Om Parkash v. State of H.P.* 2007 Supp. Cur. LJ 539. All the three judgments relied upon by the trial Court are based upon a Division Bench judgment of this Court in *Dharam Pal v. State of H.R* Latest HLJ 2007 (HP) 827. A view similar to that taken by the Division Bench of this Court in *Dharam Pal's* case *supra*, has also been taken by Hon'ble Supreme Court in *E. Micheal Raj v. Intelligence Officer Narcotic Control Bureau* (2008) 5 Scc 16 wherein it has been held that the quantity of Narcotic Drugs or Psychotropic Substances is required to be worked out, not on the basis of the total weight of recovered stuff, but on the basis of the content of Narcotic Drug or Psychotropic Substance, contained in that stuff. In view of the above stated position, there is no merit in the first contention.

4. As regards the second contention, the maximum punishment prescribed for the offence of possessing small quantity of charas is six months imprisonment or Rs. 10,000/- fine. Looking to the quantity of the charas, recovered from the respondent, as also the maximum punishment prescribed for possessing such quantity, we do not think, the trial Court has committed so serious an illegality as to call for interference in its judgment, by this Court. Hence, the appeal is dismissed.