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State of Gujarat Vs. Arifbeg @ Lala Umaravbeg Mirza and 1

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Court : Gujarat

Decided On : Oct-03-2011

Appellant : State of Gujarat

Respondent : Arifbeg @ Lala Umaravbeg Mirza and 1

Judgement :

BODY {SCROLLBAR-FACE-COLOR: #d4d0c8; SCROLLBAR-HIGHLIGHT-COLOR: #808080; SCROLLBAR-SHADOW-COLOR: #d4d0c8; SCROLLBAR-ARROW-COLOR: #ffffff; scrollbar-dark-shadow-color: #ffffff}

SPAN.searchword { background-color:yellow; }

function loadSearchHighlight()

{

var chkParamC = "txtSearch"

if (chkParamC == "txtSearch")

{

```
SearchHighlight();

document.searchhi.h.value = searchhi_string;

if( location.hash.length > 1 ) location.hash = location.hash;

}

}
```

Print

</p>

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL

MISC.APPLICATION No. 3391 of 2011

In

CRIMINAL

APPEAL No. 365 of 2011

With

CRIMINAL

APPEAL No. 365 of 2011

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STATE

OF GUJARAT - Applicant(s)

Versus

ARIFBEG

@ LALA UMARAVBEG MIRZA & 1 - Respondent(s)

==========

Appearance

:
MR

KARTIK PANDYA, APP for

Applicant(s) : 1,
None for Respondent(s) : 1 -

2.
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CORAM **HONOURABLE**

: MR.JUSTICE D.H.WAGHELA

and

HONOURABLE

MR.JUSTICE J.C.UPADHYAYA

Date

: 03/10/2011

ORAL

COMMON ORDER :

(Per

: HONOURABLE MR.JUSTICE J.C.UPADHYAYA)

1.The applicant - appellant - State has filed this application u/s. 5 of the Limitation Act praying for condondation of delay of 47 days caused in preferring appeal under section 377 of the Criminal Procedure Code [Cr. P.C] challenging adequacy of the sentence awarded on 28/4/2010 by Ld. Addl. Sessions Judge, Court No. 14, City Sessions Court, Ahmedabad, in Sessions Case No. 134 of 2008, whereby the respondents herein, who were original accused in the aforesaid sessions case, came to be convicted of the offence punishable under Section 20 [b] [ii] [B] of the Narcotic Drugs and Psychotropic Substances Act [NDPS Act] and each of them came to be sentenced to undergo rigorous imprisonment [RI] for two years and fine of Rs.100/- each and in default of payment of fine, RI for 15 days.

2.Mr. Kartik Pandya, Ld. APP, for the applicant - appellant - State submitted that the delay caused in preferring the appeal is on

account of administrative ground in obtaining the sanction order for preferring the appeal and the contents of the application are supported by the affidavit of Under Secretary of the Legal Department of the State. Mr. Pandya, Ld. APP further submitted that even on merits, it is quite obvious that the sentence awarded by the trial Court for such serious offence is disproportionate to the seriousness of the crime and is highly insufficient. It is, therefore, submitted that even on merits, the appellant has meritorious case and if the delay is not condoned, the meritorious case of the prosecution shall be adversely affected and the prosecution shall suffer great prejudice.

3.Since

Mr. Kartik Pandya, Ld. APP, for the applicant - appellant - State has submitted that there are merits in the appeal preferred under section 377 of the Cr. P.C and that if the delay is not condoned, the meritorious case of the prosecution shall be adversely affected and that the prosecution shall suffer great prejudice, we deem it expedient to examine impugned judgment and order rendered by

the trial Court, more particularly the question of adequacy of sentence awarded to the respondents accused. Considering the impugned judgment and order, so also the relevant papers supplied to us for our perusal, it becomes clear that both the accused came to be convicted for the offence of possessing contraband substance Charas. It further transpires considering the evidence on record so also the seizure panchnama exh. 23, the weight of Charas seized from the accused along with the bag was 140 grams and the net weight of the Charas without bag was 138 grams. Considering serial no. 23 in the schedule attached to the NDPS Act, it is clear that the possession of Charas upto 100 grams is considered to be small quantity, whereas the possession of Charas of 1 Kg., and above is considered to be commercial quantity. In the instant case, the Charas weighing 138 grams came to be seized. Thus, it is clear that the weight of the Charas which was seized was slightly more than the small quantity, whereas considerably less than the commercial quantity. In this respect, considering section 20 of the NDPS Act, so far as the small quantity is concerned, the contravention is made punishable with RI for a term which may extend to six months or with fine which may extend to Rs.10,000/- or with both. In the instant case, 38 grams

Charas was more than the small quantity. In the instant case, where the quantity of Charas which came to be seized from the accused was greater than small quantity, but lesser than commercial quantity, the punishment prescribed is RI for a term which may extend to 10 years and fine which may extend to Rs.1 lac. As seen above, in the instant case the quantity of Charas which came to be seized is slightly more than small quantity but considerably less than commercial quantity. In the impugned judgment, while determining the quantum of sentence, the trial Court took into consideration this aspect of the matter as well as other relevant factors which were considered to be mitigating circumstances. Under such circumstances, keeping in mind the sentence prescribed for small quantity, so also the fact that the quantity of Charas which came to be seized was slightly more than small quantity, we are of the considered opinion that the discretion exercised by the trial Court while determining the quantum of sentence cannot be said to be arbitrary or perverse. We, therefore, do not find any reason to interfere with the discretion exercised by the trial Court.

4.In

the above view of the matter, the submission made on behalf of the applicant - appellant State that there are merits in the appeal preferred under section 377 of the Cr. P.C has no force. Under such circumstances, even if the delay, as prayed for is condoned and the applicant - appellant is permitted to prefer this appeal, no fruitful purpose would be served.

5.For the foregoing reasons, the application praying condonation of delay and the appeal stand dismissed.

(D.H.WAGHELA, J.)

(J.C.UPADHYAYA, J.)

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