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Court : Delhi

Decided On : May-17-2012

Judge : Suresh Kait

Appeal No. : CRL.A. No. 89 OF 2011

Appellant : Ranjeet Singh

Respondent : State

Judgement :

SURESH KAIT, J.

1. The instant Appeal is being filed while challenging the impugned judgment dated 24.12.2010 passed by Addl. Sessions Judge / Special Judge (NDPS), Dwarka Courts, New Delhi, whereby he was held guilty for the offences punishable under Section 20 (b) (ii) (C) of the NDPS Act with fine of Rs.1 Lac. Also challenged the order on sentence dated 18.01.2011 whereby he was sentenced to undergo RI for a period of 10 years for the offences punishable under Section 20 (b) (ii) (C) of NDPS Act. Benefit of Section 428 Cr. P.C. has been extended to the Appellant.

2. Mr. K.B. Andley, Ld. Sr. Counsel appearing on behalf of the Appellant has argued only on one issue that under Section 2 (vii-a) of NDPS Act, the quantity of the substance recovered should be more than 20 Kgs. If the quantity is less, then person cannot be convicted for the offences mentioned above.

3. For the convenience, Section 2 (Vii-a) of the NDPS Act is reproduced as under:-

“Commercial quantity”, in relation to narcotic drugs and pshychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.”

Therefore, the commercial quantity of ganja will be greater than 20 kg as provided in the official Gazzette / table at Serial no. 55.

4. Ld. Sr. Advocate pointed out that the pouch allegedly recovered from the appellant was of 500 gm. each inclusive of the envelop/ wrapper. As per the prosecution case, two bags, 10 Kgs Ganja in each recovered from the appellant. Out of which 2 samples of 500 gram each were taken out from the substance recovered from each bag, which were sealed separately in closed Pullanda with the seal of NC. The remaining substances were kept in the same bags and were sealed with the seal of NC and these were given serial no. 1 and 2 respectively.

5. Additionally, the sample received by the FSL found of the quantity of 3.40 and 3.20 respectively.

6. Therefore, firstly, the FSL received the quantity less than what is sent by the prosecution and even the total quantity recovered from the appellant was not of the commercial; therefore, ld. Trial Judge has wrongly convicted the appellant without application of mind.

7. Though the issue of 20 Kgs. neither raised nor witnesses were cross-examined to this effect, however, the position remained that the total recovery inclusive the wrappers were 20 Kgs. and he was convicted for the offences punishable under Section 20 (b) (ii) (C) of NDPS Act.

8. Ld. Sr. Counsel has relied upon a case of **Rajesh Jagdamba Awasthi vs. State of Goa 2004 (9) Scale** wherein it is held as under:

However, there appears to be substance in the other submissions urged on behalf of the appellant, namely, that the weight of the substance sealed in two envelopes was found to be different from the weight of the substance received by the

laboratory as deposed to by PW-1. It is not disputed that from the shoe on the right foot 100 gms. of Charas was recovered, which was sealed in envelope 'A'. According to PW-1, the Junior Scientific Officer when that envelope was opened and the substance weighed it was found to be 98.16 gms. Similarly, from the shoe on the left foot 115 gms. of Charas was recovered which was packed and sealed in envelope B. But only 82.54 gms. of the substance was found in envelope B when the same was opened by PW-1. A similar submission was urged before the High Court and the High Court also found that this discrepancy could not be explained by the prosecution. The High Court observed that there was no doubt that the envelope B which was said to contain 115 gms. of Charas was found to contain only 82.54 gms. of Charas and this could not be considered to be a minor discrepancy. However, the High Court was of the view that even if this sample contained in envelope B was not considered against the appellant on account of discrepancy in the weight, since there was no material discrepancy in the weight of the Charas found in the other envelope A, the case against the appellant stood established on the basis of the Charas recovered, packed and sealed in envelope A.

We do not find it possible to uphold this finding of the High Court. The appellant was charged of having been found in possession of Charas weighing 180.70 gms. The Charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by Junior Scientific Officer, PW-1, he found the quantity to be different. While in one envelope the difference was only minimal, in the other the difference in weight was significant The High Court itself found that it could not be described as a mere minor discrepancy. Learned counsel rightly submitted before us that the High Court was not justified in upholding the conviction of the appellant on the basis of what was recovered only from envelope 'A' ignoring the quantity of Charas found in envelope 'B'. This is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW-1 was less than the quantity sealed and sent to him. As he rightly emphasized, the question was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for chemical

analysis to PW-1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful.

15. This is not all. We find from the evidence of PW-4 that he had taken the seal from PSI Thorat and after preparing the seizure report, panchnama, etc. he carried both the packets to the police station and handed over the packets as well as the seal to Inspector Yadav. According to him on the next day, he took back the packets from the police station and sent them to PW-3, Manohar Joshi, Scientific Assistant in the Crime Branch, who forwarded the same to PW-1 for chemical analysis. In these circumstances, there is justification for the argument that since the seal as well as the packets were in the custody of the same person; there was every possibility of the seized substance being tampered with, and that is the only hypothesis on which the discrepancy in weight can be explained. The least that can be said in the facts of the case is that there is serious doubt about the truthfulness of the prosecution case.

9. Ms.Rajdipa Behura, learned APP has fairly conceded that the appellant has been convicted on recovery of 20 KG Ganja, which is of ‘commercial quantity’. It is also not the case of the prosecution that the Ganja was taken out from the bags and weighed thereafter.

10. As per clauses (viia) and (xxiiia) of Section 2 of NPPS Act, 1985 and in supersession of Ministry of Finance, Department of Revenue Notification S.O. 527 (E) dated 16th July, 1996, except as respects things done or omitted to be done before such suppression, the Central Government specified the quantity mentioned in column No.5 and 6 of the Table, in relation to the narcotic drugs or psychotropic substances mentioned in the corresponding entry in columns 2 to 4 of the said Table, as the small quantity and commercial quantity respectively for the purposes of the said clauses of that section.

11. At serial No.55, Ganja is mentioned and ‘commercial quantity’ is prescribed in column No.6 as 20 Kgs and corresponding ‘small quantity’ is 1000 grams.

12. In the instant case, the quantity is lesser than the ‘commercial quantity’ and more than the ‘small quantity’, therefore, the appellant can be punished for the

lessor offence punishable under Section 20 (b) (ii) and B to a term which may extend upto ten years and with fine which may also extend to Rs.1.00 Lac, even the charges have not been framed thereunder.

13. I am conscious, the Apex Court in **Ghasita Sahu v. State of Madhya Pradesh : AIR 2008 SC 1425** has reduced the sentence to the period already undergone.

14. I am also conscious to the fact that the provisions of NDPS Act, 1985 were amended by the Amending Act 9 of 2001, which rationalised the structure of punishment under the Act by providing graded sentences linked to the quantity of narcotic drug or psychotropic substance in relation to which the offence was committed. The application of strict bail provisions was also restricted only to those offenders who indulged in serious offences. The Statement of Objects and Reasons appended to the Bill declares this intention thus:-

"Statement of Objects and Reasons:- Amendment Act 9 of 2001:- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalization of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences."

15. As a consequence of the Amending Act coming into force on 2nd October, 2001, the sentencing structure underwent a drastic change. The Act introduced the concept of "commercial quantity" in relation to narcotic drugs or psychotropic substances by adding clause (viia) in Section 2, which defines this term as any

quantity greater than a quantity specified by Central Government by notification in the official gazette. Further, the expression "small quantity" is defined in Section 2, sub- section (xxiiia), as any quantity lesser than the quantity specified in the notification. Under the rationalised sentencing structure, the punishment would vary depending on whether the quantity of offending material was "small quantity", "commercial quantity" or something in between. This is the effect of the rationalisation of sentencing structure carried out by the Amending Act, 9 of 2001, in Section 27. A notification was issued on 9th October, 2001, specifying in respect of 239 Narcotic Drugs and Psychotropic Substances, as to what would be "small quantity" and " commercial quantity".

16. Apart from these provisions, the Act of 2001 introduced further amendments by substituting a new section for old Section 27 of the 1985 Act. A new provision, Section 32B was inserted by the Amending Act 9 of 2001, which prescribes the factors to be taken into account for imposing higher than the minimum punishment. Sections 41 to 43, which are substituted by the amendment, deal with the power of issuing warrant and authorization; power of entry, search, seizure and arrest without warrant or authorisation; and power of seizure and arrest in public places. Significant changes were made in section 54 of the Act, which deals with the presumption to be applied in a trial under the Act arising from possession of illicit articles. Section 41(1) of the Amending Act, 9 of 2001 is the section which determines the application or exclusion of the amending provisions, and reads as under:-

"41. Application of this Act to pending cases. (1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence: Provided that nothing in this Section shall apply to cases pending in appeal".

17. By this Section, Parliament has declared its intention to apply the amended provisions of the Act to: (a) All cases pending before the court on 2nd October, 2001; (b) All cases under investigation as on that date; and provides that these categories of cases shall be disposed of in accordance with the provisions of the 1985 Act as amended by the Act of 2001. In other words, the benefit of the rationalised sentencing structure would be applicable to these categories. The proviso, however, makes an exception and excludes the application of the rationalised sentencing structure to cases pending in appeal.

18. After considering submissions of learned counsels for parties and legal position, I am of the considered opinion that ld. Trial Judge has wrongly convicted the appellant under the wrong offences, therefore the impugned judgment dated 24.12.2010 and order on sentence dated 18.01.2011 is hereby set aside.

19. Vide the impugned judgment, the appellant has been sentenced to undergo RI for a period of 10 years for the offences punishable under Section 20 (b) (ii) (C) of NDPS Act for possessing ‘commercial quantity’. Therefore, he is held guilty and convicted under Section 20 (b) (ii) (C) of the NDPS Act.

20. Pursuance thereto, as per Nominal Roll dated 09.09.2011, the appellant spent 02 years and 19 days in custody. Thus, in total, as on date, he has already spent more than 02 years, 09 months and 27 days approx in custody.

21. While setting aside the impugned judgment and order on sentence, the appellant is convicted for the offence punishable under Section 20 (b) (ii) (B) of the NDPS Act. Accordingly, he is sentenced to the period already undergone with fine of Rs.25,000/-. In default of the payment of fine amount, he shall undergo SI for three months.

22. Accordingly, Crl. A. 89/2011 is disposed of on above terms.

23. Copy of order be sent to the appellant through Jail Superintendent.

24. Trial Court Record be sent back forthwith.

25. No order as to costs.

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