

Babloo Vs. State

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Court : Delhi

Decided On : Mar-04-2013

Judge : S. P. Garg

Appellant : Babloo

Respondent : State

Judgement :

\$~46 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

4. h March, 2013 + CRL.A. 224/2006 & CRL.M.A.2854/2013 BABLOO
Appellant Through : Mr.Anish Dhingra, Advocate. versus STATE Through :
Respondent Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG
S.P.Garg, J.

(Open Court) 1. The appellant- Babloo impugns judgment dated 02.07.2005 and order on sentence dated 04.07.2005 of Special Judge (NDPS Act) in Sessions Case No.64/2003 arising out of FIR No.326/2003 under Sections 20 & 21/61/85 of the NDPS Act, PS Shakarpur by which he was held guilty for committing offences punishable under Sections 20/21/61/85 NDPS Act. He was sentenced to undergo RI for five years with fine ` 50,000/- under Section 21 (b) NDPS Act and in default of payment of fine to further undergo SI for five months. CRL.A. 224/2006 He was also sentenced to undergo RI for page 1 of 5 fourteen years with fine ` 1,40,000/- under Section 20 (c) NDPS Act and in default of payment of fine to further undergo SI for fourteen months.

2. Allegations against the accused were that on 25.07.2003 at about 08.00 P.M. near 708 JJ Camp Tri Nagar, he was found in possession of 2 kg. and 500 gm. Charas and 110 gm. of smack. After conducting necessary proceedings First Information Report was lodged. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was submitted against the accused for committing offences punishable under Sections 21 (b) and 20 (c) of NDPS Act. The prosecution examined six witnesses. In 313 Cr.P.C. the accused pleaded innocence. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted and sentenced the appellant. Being aggrieved, the appellant has preferred the present appeal.

3. During the course of arguments, learned counsel for the appellant on instructions from the appellant- Babloo stated that the appellant has opted not to challenge the conviction under Sections 21 (b) and 20 (c) of NDPS Act. He however, prays for modification of the order on sentence as the CRL.A. 224/2006 page 2 of 5 appellant has already undergone more than nine years. The appellant is not a previous convict. His overall jail conduct is satisfactory. He is poor person and has to maintain wife and two children.

4. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has not opted to challenge the findings of the Trial Court on conviction under Sections 21 (b) and 20 (c) of NDPS Act, the order on conviction of the Trial Court stands affirmed.

5. Regarding order on sentence, it reveals that the appellant has been sentenced to undergo RI for fourteen years. Nominal roll dated 20.03.2012 reveals that he has already undergone eight years seven months and thirteen days incarceration. The said period has since increased to nine years six months and thirteen days. Minimum sentence under Section 20 of the NDPS Act is ten years. He is not a previous convict.

6. In the case of Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat, 2012 (10) SCALE 21 decided on 05.10.2012, the Supreme Court reduced the sentence from 15 years to 10 years as the appellant therein had already served nearly 12

years in jail. The order on payment of fine of ` 1,50,000/- was upheld but default sentence was reduced from RI for 3 years CRL.A. 224/2006 page 3 of 5 to RI for 6 months. The appellant therein was found in possession of 500 grams of brown sugar and was convicted for the offence punishable under Section 8 (c), 21 and 29 of NDPS Act. The Division Bench of Gujarat High Court had dismissed the Crl.A.No.11 & 75/2002 vide order dated 08.07.2002. Number of other judgments have been shown and placed on record whereby similar relief was given in various cases by this Court.

7. Considering all these facts and circumstances of the case and in the interest of justice, keeping in mind the peculiar facts of this case, the order on sentence is modified and the substantive sentence of the appellant under Section 20 NDPS Act is reduced to RI for ten years which is the minimum sentence.

8. Regarding total fine of ` 1,90,000/-, the appellant has expressed his inability to deposit the amount due to poverty. The amount of ` 1,90,000/imposed by the Trial Court cannot be reduced. However, taking into consideration Section 30 of Cr.P.C. and the judgment of Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat (supra) where the default sentence was reduced from three years to six months, it is ordered that the appellant shall pay a fine of ` 50,000/- and in default of payment of fine he CRL.A. 224/2006 page 4 of 5 shall undergo SI for a period of two months instead of five months under Section 21 (b) NDPS Act. He shall pay a fine of ` 1,40,000/- under Section 20 (c) NDPS Act and in default of payment of fine to further undergo SI for five months instead of fourteen months.

9. The appeal filed by the appellant is disposed of in the above terms. Crl.M.A.2854/2013 also stands disposed of. The date already fixed in the matter i.e. 28.03.2013 stands cancelled.

10. A copy of the order be sent to Jail Superintendent, Tihar Jail. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record along with copy of this order be sent back to the Trial Court. S.P.GARG, J MARCH 04 2013/tr CRL.A. 224/2006 page 5 of 5