

Rattan Singh Vs. State

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Court : Delhi

Decided On : Mar-05-2013

Judge : S. P. Garg

Appellant : Rattan Singh

Respondent : State

Judgement :

\$-17 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

5. h March, 2013 + CRL.A.21/2006 & CRL.M.A.Nos.6115/2009 & 16443/2010
RATTAN SINGH Appellant Through : Ms.Bhavita Modi, Advocate with
Mr.Apurv Chandola, Advocate. versus STATE Respondent Through :
Mr.M.N.Dudeja, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.Garg, J.

(Open Court) 1. The appellant- Rattan Singh has preferred the present appeal against the judgment dated 23.10.2004 and order on sentence dated 25.10.2004 of Additional Sessions Judge in Sessions Case No.122/2003 arising out of FIR No.48/2003 by which he was convicted for committing offence punishable under Sections 20 NDPS Act and sentenced to undergo RI for a period of 10 years with fine of ` 1,00,000/- and in default of payment of fine to undergo RI for a period of two years.

2. The appellant was apprehended by the police of Police Station Civil Lines vide FIR No.48/2003 and challaned for committing offence punishable under Section

20 NDPS Act. It was alleged that the appellant was found in possession of 1.250 kgs. of charas on 25.02.2003 at about 09.45 P.M. at Patri near Hanuman Mandir, Ring road, near Shahdara flyover.

3. The prosecution examined eight witnesses in all. Statement of the accused was recorded under Section 313 Cr.P.C. No defence evidence was led. After considering the facts on record and appreciating the arguments of the concerned parties, by the impugned judgment the appellant was held guilty for committing the offence punishable under Section 20 NDPS Act and sentenced. Being aggrieved, the appellant has preferred the present appeal.

4. During the course of arguments, learned counsel for the appellant on instructions from the appellant- Rattan Singh stated that the appellant has opted not to challenge the conviction under Section 20 NDPS Act. He however, prayed for modification of the order on sentence as the appellant has already undergone sentence for about 10 years. The appellant is very poor and is unable to deposit the hefty fine of `1,00,000/-. The appellant is not a previous convict.

5. 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 Section 20 NDPS Act, the order of conviction of the Trial Court stands affirmed.

6. Regarding order on sentence, it reveals that the appellant was found in possession of 1.250 kgs. of charas and was sentenced to undergo RI for a period of 10 years with fine of ` 1,00,000/-. Fine of ` 1,00,000/has not been deposited. Nominal roll dated 15.01.2013 reveals that the appellant has already undergone sentence for 9 years 10 months and 18 days as on 14.01.2013. The period has since increased to more than 10 years approximately. It further reveals that the appellant is not a previous convict and is not involved in any other criminal case. His overall conduct in the jail is satisfactory.

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 substantive sentence under Section 20 NDPS Act is maintained as it is the minimum sentence

i.e. RI for 10 (Ten) years.

8. 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 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.

9. Regarding fine of ` 1,00,000/-, the appellant has expressed his inability to deposit the amount due to poverty. The amount of ` 1,00,000/- 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 ` 1,00,000/- and in default of payment of fine he shall undergo SI for a period of four months.

10. The appeal filed by the appellant is disposed of in the above terms. Pending applications also stand disposed of.

11. 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) JUDGE
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