

Munib Kumar Vs. State

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Court : Delhi

Decided On : Jul-05-2013

Judge : S. P. Garg

Appellant : Munib Kumar

Respondent : State

Advocate for Pet/Ap. : Mr. Shaiesh Kumar

Judgement :

\$-25 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

5. h JULY, 2013 + CRL.A. 250/2011 MUNIB KUMAR Through : Appellant Mr. Shaiesh Kumar, Advocate. versus STATE Through : Respondent Mr.M.N.Dudeja, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.Garg, J.

(Open Court) 1. The appellant- Munib Kumar impugns judgment dated 27.04.2010 of learned Additional Sessions Judge in Sessions Case No. 16/2008 arising out of FIR No. 656/2007 PS Hazrat Nizammudin by which he and Sunil Kumar were convicted under Section 20 (b)(ii)(B) of NDPS Act. By an order dated 27.04.2010, the appellant was sentenced to undergo RI for seven years with fine ` 70,000/- and in default of payment to undergo SI for nine months.

2. Allegations against the appellant were that on the night intervening 23/24.11.2007 at Mathura Road, Nizamuddin near petrol pump, he and his associate Sunil Kumar were coming from the side of Railway Road, Nizamuddin

on foot and were carrying bags on their shoulders and suit cases in their hands. On checking the bags and suit cases, it were found containing ganja. The total recovery effected from the appellant was 8 kg and 10 kg from both the bags. After completion of investigation, they were charged. The prosecution examined nine witnesses. In their 313 statements, the accused persons pleaded false implication. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held both the present appellant- Munib Kumar and Sunil Kumar guilty for the offence mentioned previously. Being aggrieved, the appellant- Munib Kumar has preferred the instant appeal.

3. During the course of arguments, learned counsel for the appellant on instructions from Munib Kumar stated that the appellant has opted not to challenge the conviction under Section 20 (b)(ii)(B) of NDPS Act. He however, prayed for modification of the order on sentence as the appellant has already undergone more than five years sentence.

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 Section 20 (b)(ii)(B) of NDPS Act, the order of conviction of the Trial Court stands affirmed.

5. Regarding modification of order on sentence, it reveals that the appellant was sentenced to undergo RI for seven years with fine ` 70,000/-. Nominal roll dated 17.05.2012 reveals that he has already undergone four years, five months and twenty four days incarceration as on 17.05.2012. He is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. It is stated that he is aged about 23 years and has old parents to take care of them. Considering all the mitigating circumstances, the substantive sentence is modified and the appellant is sentenced to undergo RI for six years with fine ` 50,000/- and failing to pay the fine to undergo SI for one month. He shall be entitled to benefit under Section 428 Cr.P.C.

6. The appeal is disposed of in the above terms. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE JULY 05 2013 tr

