

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:53550

Court No. - 16**Case :-** GOVERNMENT APPEAL DEFECTIVE No. - 2878 of 2007**Appellant :-** Union Of India Through The Superintendent Ex. Central**Respondent :-** Raj Kumar**Counsel for Appellant :-** I.B. Singh, Ashish Verma, Sm Singh Royekwar**Hon'ble Shamim Ahmed, J.****(C.M. Application No. 18146 of 2007)**

The case is taken up in the revised call.

This is an application for condonation of delay in filing the appeal. .

The Stamp Reporter has reported that this appeal is beyond time by 19 days.

As per office report dated 31.01.2008, notice has been served personally on the respondent, but none has appeared on his behalf.

Heard learned counsel for the appellant and perused the material available on record.

The reason shown in the affidavit filed in support of the application for condonation of delay is sufficient and convincing.

The application of condonation of delay is allowed.

Delay in filing the appeal is hereby condoned.

Order Date :- 30.7.2024

Arvind

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Case :- GOVERNMENT APPEAL DEFECTIVE No. - 2878 of 2007

Appellant :- Union Of India Through The Superintendent Ex. Central

Respondent :- Raj Kumar

Counsel for Appellant :- I.B. Singh, Ashish Verma, Sm Singh Royekwar

Hon'ble Shamim Ahmed, J.

1. As per office report dated 31.01.2008, notice has been served personally on the respondent, but none has appeared on his behalf.
2. Heard learned counsel for the appellant and perused the impugned order.
3. Instant appeal has been filed by the Union of India Under Section 377 Cr.P.C for enhancement of sentence of accused-convict Raj Kumar, as awarded by the court of Additional Sessions Judge, Fast Track Court No. 29, Barabanki, on 11.09.2007, in Criminal Trial No. 49 (C) of 2004, State (Union of India) vs. Raj Kumar. The accused was convicted under Section 8/21-B of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) and sentenced to a term of four years' rigorous imprisonment (R.I.) along with a fine of Rs. 30,000/- and under Section 9-A/25-A of the NDPS Act sentenced to a term of three years' R.I. and a fine of Rs. 10,000/- with default Stipulation.
4. The brief facts of the case are that on December 11, 2003, based on confidential information, a team led by Mr. K. R. Meena, Assistant Narcotics Commissioner, along with Mr. A. B. Acharya, Superintendent, and other police personnel, arrived at the residential house of Raj Kumar in village Barouli Malik on September 12, 2003, at 8:00 AM. The team included Inspector Nandlal, D. N. Gupta, P. C. Dhyani, Sub-Inspectors K. K. Deepak, Mahesh Pratap, and 8 constables, as well as a district government vehicle, Upon reaching the house, the team secured the premises and additional 4-5 individuals arrived at the location. Rahmat Ali and Rajaram were asked to enter the house, and they consented. When the door was knocked, a person came out and identified himself as Raj Kumar, son of Jagannath. The

witnesses identified him, and the search authorization was shown to him. Raj Kumar claimed to have completed 12th grade and stated that his knowledge of English was limited. Mahesh Pratap, Sub-Inspector, translated the search authorization into Hindi, and Raj Kumar signed it with the witnesses also signing. During the search, Raj Kumar took a key from his pants pocket and unlocked a room adjoining the kitchen in the house. He then opened a wooden cupboard on the eastern wall of the room, which had no lock. Inside the cupboard, a plastic, dark brown bucket was found containing a wet substance wrapped in polyethylene packets. The cupboard also contained white thick cloths and a strainer, which Raj Kumar admitted to using in the process of making heroin from opium.

5. Learned counsel for the Union of India submits that the case involves the recovery of 700 grams of heroin liquid and 320 grams of acetic anhydride, which are classified as commercial quantities under Sections 21(c) and 2(vii) (a) of the NDPS Act. The quantities recovered fall well within the definition of commercial quantities, warranting stricter sentencing.

6. Learned counsel for the Union of India submits that the learned Trial Court has committed an error by imposing a sentence below the minimum required by law. According to the NDPS Act, the minimum sentence for such offenses is 10 years of R.I., which may extend up to 20 years, with a fine of at least Rs. 1 lakh, potentially extending to Rs. 2 lakhs.

6. Learned counsel for the Union of India submits that the once the Trial Court has convicted the accused for the offenses committed, it is mandatory to impose the minimum sentence prescribed by the statute. The current sentence is less than the minimum required.

7. Learned counsel for the Union of India submits that the the offense was committed on July 28, 2001. As the accused had not yet completed 6 years in jail at the time of sentencing, the learned trial Court erred in awarding a sentence that is less than the statutory minimum.

8. Learned counsel for the Union of India submits that the nature and quantity of the contraband involved, the accused should be sentenced to the

minimum term of 10 years of R.I. and a fine of not less than Rs. 1 lakh, in compliance with the statutory requirements.

9. After hearing learned counsel for the Union of India and after perusal of the impugned judgment, this Court finds that the trial court had correctly applied the statutory provisions to the facts of the case and reviewed the evidence in the context of the NDPS Act's provisions. The trial court has correctly determined that the seized heroin, weighing 700 grams and containing 10.86% diacetylmorphine, does not meet the statutory threshold for a commercial quantity. Specifically, the trial court calculated the effective amount of diacetylmorphine as approximately 76 grams. This calculation is based on the percentage of diacetylmorphine present in the heroin, which is a crucial factor in determining whether the substance qualifies as a commercial quantity under the law.

Under Section 21(c) of the NDPS Act, the statutory threshold for a commercial quantity of heroin is set at 250 grams of pure diacetylmorphine. The trial court's determination that the effective quantity of diacetylmorphine in the seized heroin falls short of this threshold is consistent with the legal definition. The effective quantity of 76 grams is substantially below the 250 grams required for a commercial classification.

The trial court appropriately factored in the purity of the heroin when evaluating whether it met the criteria for a commercial quantity. The court's analysis of the purity level, which resulted in an effective quantity of diacetylmorphine that is less than the statutory threshold, is in accordance with legal standards. The court's decision reflects a correct application of the law, taking into account both the total weight and the purity of the substance.

Given the trial court's finding that the effective quantity of diacetylmorphine is below the threshold for a commercial quantity, it is evident that the charges under Section 21(c) of the NDPS Act are not applicable in this case. The classification of the substance does not meet the statutory criteria for a commercial-scale offense.

Fairness is a fundamental principle in the judicial process. It demands that all parties are treated equitably and that legal standards are applied consistently. The trial court's role in assessing whether the quantity of heroin meets the commercial threshold reflects a fair evaluation of the evidence and adherence to legal definitions. The court's conclusion that the effective quantity of diacetylmorphine does not meet the statutory threshold ensures that the classification of the offense is just and aligned with the intended scope of the NDPS Act.

The government's appeal, which challenges this determination, has not provided sufficient grounds to overturn the trial court's well-reasoned decision. The trial court's assessment of the evidence and its application of the law were proper and aligned with legal standards.

10. This court finds that the trial court's judgment was well-reasoned and in alignment with the statutory definitions and the evidence presented. The trial court's finding that the seized quantity does not qualify as a commercial quantity stands upheld. Thus, the instant appeal against inadequacy of sentence is not maintainable and is liable to be dismissed.

11. Accordingly, the appeal filed by the Union of India for enhancement of the sentence is therefore **dismissed**. The judgment of the Additional Sessions Judge, Fast Track Court No. 29, Barabanki, in Criminal Trial No. 49 (C) of 2004, State (Union of India) vs. Raj Kumar is **upheld**.

12. The appeal is **dismissed**. The sentence awarded by the trial court is **upheld**.

13. Copy of this judgment be sent to the trial court for information.

Order Date :- 30.7.2024

Arvind

(Shamim Ahmed, J.)