



2026-AHE:15575

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 4036 of 2014

Mukhtyar Ahmad

.....Appellant(s)

Versus

Union of India

.....Respondent(s)

Counsel for Appellant(s)	: Abhay Raj Singh, Brij Raj Verma
Counsel for Respondent(s)	: Krishna Agarawal, Sanjay Kumar Singh, Spl. Public Prosecutor

Court No. - 93

HON'BLE MRS. VANI RANJAN AGRAWAL, J.

1. The instant appeal has been preferred against the Judgment and Orders dated 20.8.2014 passed by the learned Additional Session Judge/Special Judge (E.C. Act) Pilibhit in S.S.T. No.61 of 2012 (Union of India vs. Mukhtyar Ahmad) under Sections 8(c)/20, 25, 27(A), (29(11) B and C), 43(B), 49 of the N.D.P.S. Act, 1985 and Section 111(D) 135(B) of the Customs Act, 1962, Police Station Custom Circle, Pilibhit, District Pilibhit, whereby the appellant has been convicted and sentenced as under:-

i) Under section 20(B)(ii)(c) of N.D.P.S. Act - Rigorous Imprisonment for a period of fifteen years to appellant along with fine of Rs.2,00,000/- (Rs.two Lakhs) and in case of default in payment of fine the appellant shall undergo three years additional imprisonment.

(ii) Under sections 111/135 of the Customs Act - Imprisonment for a period of five years to the appellant along with fine of Rs.20,000/- (Rs.twenty thousand) and in case of default in payment of fine the appellant shall undergo six months additional imprisonment.

All the sentence shall run concurrently.

2. Briefly, the facts of the complaint are that on 25.4.2012, based on a tip-off, a preventive team was formed under the leadership of the Assistant

Commissioner of Customs (Preventive) Department, consisting of the complainant, Sudhir Kumar Srivastava, Inspector Satyapal Yadav, Inspector of Customs, Anant Sagar, Inspector Diwakar Singh, Head Constable of Customs, Ram Babu, Assistant Sub-Inspector of Customs Division, Bareilly, Sanjay Tiwari, Constable, Sunil Kumar, Driver, and Karamat Ali, Driver of a private vehicle, Bolero No.HR 37 B-5480. Based on the said information, a Toyota Qualis vehicle, No. DL 3 CQ 6881, containing a large quantity of Nepali Charas and Ganja, was reported to be contraband. This vehicle was to leave Puranpur via Pilibhit to Bareilly on 25.4.2012 at 10-11 A.M.. Based on this information, the Customs Department's preventive team assembled for action at 9:30 A.M. and took witnesses Aziz Ahmed and Shadab from the Puranpur Kotwali intersection. The department's preventive team was to search a white Toyota Qualis vehicle, number DL3CQ-6881, parked next to the Jaiswal Auto Garage. The witnesses waited at a shop near the garage and waited for the vehicle. At approximately 10:00 A.M., a man arrived, suddenly started the Toyota Qualis, and began driving towards the Assam Road Kotwali intersection. The police chased and attempted to apprehend the vehicle. The Toyota vehicle stopped 30-40 meters from the intersection toward Pilibhit near Rajiv Singh's garage. The driver got out and began showing the vehicle to a mechanic. The Customs Department's preventive team surrounded the two vehicles and parked them near the Toyota Qualis. Inspector Satyapal Yadav introduced himself to the driver and informed him that Charas and Ganja were hidden in the vehicle and told him that he has the right to have himself and his vehicle to be searched by a Gazetted Officer or Magistrate. The complainant, Sudhir Kumar Srivastava, stated that he was the Superintendent of Customs and that he could have the search in his presence. When asked by the inspector for his name and address, the man gave his name as Mukhtiyar Ahmed and said he had no objection to having his vehicle searched. After this, each member of the preventive team of customs officers offered to search Mukhtiar Ahmed and got himself searched so that Mukhtiar Ahmed could be assured that the Customs Department officials did not have any objectionable material. Thereafter, the

search of the said Toyota Qualis vehicle was started and it was found that the rear seat of the vehicle was much thicker and swollen than normal and touching it confirmed the presence of some material inside and new screws and rivets were fitted in the side panel of the rear door of the vehicle and on finding evidence of new welding at various places, considering the possibility of hiding the material by making a cavity in the vehicle and as tools like pliers and screwdrivers were not available on the spot, the vehicle was taken to the Customs Office, Pilibhit for searching the vehicle and after completing the investigation and search work, it was found that many secret places had been made in the vehicle and when the backrest cover of the vehicle was opened, packets of hashish were found from it and when the rear seat was opened, packets of charas were found set in an artificial space made in it and when the rivets and screws of the side panel of the rear doors of the vehicle were opened, half kg and 1 kg packets of charas were recovered from it. Nothing was recovered from the cavity made under the rear seat's mating, and a packet of ganja wrapped in blue plastic wrapped in newsprint was found in the cavity between the front seats. Subsequently, every part of the vehicle was searched, but nothing else was recovered. Upon counting and weighing the recovered charas and ganja packets, it was found that 223 packets of charas weighing half a kilogram each, 56 packets of hashish weighing 1 kilogram each, totaling 167.5 kilograms, and one packet of ganja weighing 2 kilograms were recovered. During the search, vehicle registration, insurance, and pollution control documents were recovered, which revealed that the owner of the vehicle was Pradeep Kumar, resident of 105, Jamarupur, Lajpat Nagar, New Delhi. The aforementioned vehicle, number DL3CQ-6881 Toyota Qualis, was taken into government custody. For chemical testing, two samples of 25 grams each were taken from each packet of charas and two samples of 25 grams each from each packet of ganja. The samples were sealed and formed into two separate large bundles, with the ganja sample sealed. The remaining half-kilogram packets of charas were sealed in one bundle and the one-kilogram packets in the other. The samples were sealed. The preventive squad members, employees, Mukhtiyar

Ahmed, and the arbitrators signed and thumbprinted all the bundles. The driver, Mukhtiyar Ahmed, was personally searched and questioned about the charas, ganja, and the vehicle. Testing kits were ordered from Lucknow and the charas and ganja were tested, confirming the presence of both. During interrogation, Mukhtiyar Ahmed stated that on April 22, 2012, in the afternoon, near the Assam Road Puranpur bypass, he encountered three individuals travelling in the same vehicle. One of them, a former acquaintance of his, Kedarnath, a resident of Kanchanpur Naipal, told him that the driver had suddenly fallen ill, so he should take the vehicle to Bareilly. Kedarnath himself then alighted at Puranpur. During the search operation, Mukhtiyar Ahmed received several calls from Kedarnath Kanchanpur Naipal at the Customs office, on his mobile number 9779809400606, repeatedly inquiring about the goods. The seizure report was prepared by Inspector Satyapal Yadav, and after reading it aloud, the accused Mukhtiyar Ahmed, the arbitrators, and the members of the preventive team affixed their signatures and thumbprints. A copy of the report was handed to Mukhtiyar Ahmed and he signed the receipt. Based on the aforementioned complaint, investigation was started.

3. On 1.12.2012, charges were framed against accused Mukhtiyar Ahmed under sections 20(c), 25, 27(a), 29(1) ab of the NDPS Act and sections 111/135 of the Customs Act. The accused denied the charges and claimed trial.

4. To prove the charges against the accused on behalf of the prosecution, P.W.-1 Sudhir Kumar Srivastava; P.W.-2 Satyapal Yadav, P.W.-3 Ramesh Chandra Sonkar; P.W.-4 Anant Sagar; P.W.-5 Sanjay Kumar Tiwari.

5. The learned trial court after perusing and analyzing the evidence on record and hearing the counsel for both the parties convicted and sentenced the accused appellant as hereinbefore mentioned in the beginning of the judgment. Hence, this appeal.

6. I have heard Sri Brij Raj Verma, learned counsel for the appellant; Sri Krishna Agrawal, learned counsel for the opposite party.

7. Learned counsel for the appellant has submitted that he does not want to argue this appeal on merit and he wants to confine his argument only on the point of quantum of punishment.

8. Learned counsel for the appellant has submitted that the learned trial court has not given cogent reasons in awarding the punishment to the accused appellant higher than the minimum prescribed for the offence and has also not considered the provisions of Section 32-B of the NDPS Act in awarding the sentence of 15 years rigorous imprisonment and fine of Rs.2 lac. He has further submitted that the accused appellant is in jail since the very beginning i.e. from 26.4.2012, thus he has suffered imprisonment of about 14 years. It is also submitted that none of the conditions prescribed under Section 32-B of the NDPS Act is attracted in the present case. So the sentence of 15 years is unjustified. Six months further incarceration over and above the minimum sentence of 15 years can be adjusted with the period of additional imprisonment imposed upon the appellant in case of default in payment of fine. It is also submitted that the accused appellant has no criminal antecedents and he is not a previous convict. The appellant is now aged about 37 years and he is the only bread earner of his family which is facing financial hardship and is at the verge of starvation because of the incarceration of the accused appellant. In support of his contention learned counsel for the appellant has cited the ruling of the Supreme Court given in the case of **Shahejadhkhan Mahebubkhan Pathan Vs. State of Gujarat (2013) 1 SCC (Crl.) 558** in which the Supreme Court has been pleased to reduce the period of additional imprisonment in default of payment of fine from three years to six months.

9. On the other hand, learned AGA for the State has submitted that 167.5 kgs. contraband which is the huge quantity has been recovered from the vehicle from which the accused appellant was arrested and thus the said

contraband was in possession of the accused appellant. So the act of the accused appellant was against the main stream of the society and against the interest of the Nation. So there is no ground to reduce the sentence of the accused appellant awarded to him by the trial court.

10. I have considered the rival submissions of learned counsel for both the parties.

11. First of all, I would like to refer Section 32-B of the NDPS Act which reads as under:-

"32B. Factors to be taken into account for imposing higher than the minimum punishment- Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:-

- (a) The use or threat of use of violence or arms by the offender;*
- (b) The fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;*
- (c) The fact that the minors are affected by the offence or the minors are used for the commission of an offence;*
- (d) The fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;*
- (e) The fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offence;*
and
- (f) the fact that the offender is involved in other illegal activities*

facilitated by commission of the offence."

12. The above Section 32-B of the NDPS Act has been added and made effective from 2.10.2001. The incident of this case took place on 25.4.2012 and the impugned judgment was pronounced by the trial court on 20.8.2014. So Section 32-B of the NDPS Act is fully applicable in the case at hand as has been held by the Apex Court in the case of **Jawahar Singh Vs. State (NCT of Delhi), (2009) 6 SCC 490**.

13. The trial court has awarded the sentence of 15 years rigorous imprisonment and fine of Rs.2 lac to the accused appellant under Section 20(B)(ii)(c) of N.D.P.S. Act of the NDPS Act on the ground that huge quantity of the said contraband has been recovered from the possession of the accused appellant and sentence of five years imprisonment and fine of Rs.20,000/- under Section 111/135 of the Customs Act. There is nothing on record to show that the accused appellant had committed any act which may lie under any of the clauses of Section 32-B of the NDPS Act hereinbefore mentioned. But that does not mean that the Court cannot award the sentence more than the minimum sentence in the absence of any of the above conditions mentioned in clauses (a) to (f) because these conditions are in addition to the factors as the Court may deem fit in awarding higher punishment to the accused. In the case at hand, there is nothing on record to show that the accused appellant had previous criminal history or he is a previous convict and that the appellant is the sole bread earner having old and ailing parents. Thus, regard being had to all the facts and circumstances of the case, I think that reduction of sentence of 15 years rigorous imprisonment awarded to the appellant to the period of imprisonment already undergone by him and in default of payment of fine, reduction of sentence of three years and six months imprisonment respectively to six months' simple imprisonment would meet the ends of justice.

14. In view of the above, the appeal is partly allowed. The conviction of the accused appellant under Section 20(B)(ii)(c) of N.D.P.S. Act and under

Section 111/135 of Customs Act are maintained but the sentence of 15 years' rigorous imprisonment awarded to the appellant is reduced to the period of imprisonment already undergone by him and fine of Rs.2 lac and Rs.20,000/- is maintained but in default of payment of fine, sentence of three years and six months imprisonment is reduced to six months simple imprisonment.

15. Accused appellant Mukhtyar Ahmad is in jail. Since he has already served out the sentence of imprisonment awarded to him, so he shall be set at liberty forthwith on payment of fine of Rs.2,20,000/- before the trial court concerned.

16. The case property relating to this case shall be destroyed as per rules.

17. Trial court record be sent to the trial court concerned along with the copy of this judgment to do the needful.

April 16, 2026
Dev

(Mrs. Vani Ranjan Agrawal,J.)