

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.167 of 2009

Mrs.Rakhi Raju Thakur .. Appellant
Versus
The State of Maharashtra .. Respondent

Ms.Rupali Shinde, Advocate for the appellant.

Mrs.S.V.Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 17th MARCH, 2015

ORAL ORDER :

1 The appellant and three others were prosecuted on the allegation of having committed offences punishable under section 20(b)(ii)(B) of the NDPS Act. The Judge of the Special Court under the NDPS Act, after holding the trial, found all of them guilty. He sentenced the appellant who was the accused no.3 in the said case to suffer RI for six months and to pay fine of Rs.10,000/- in default to suffer RI for one and half months. The appellant, being aggrieved by her conviction and the sentence imposed upon her, has filed the present appeal.

2 I have heard Ms.Rupali Shinde, learned counsel for the appellant. I have heard Mrs.S.V.Gajare, learned APP for the State. With their assistance, I have gone through the impugned judgment with reference to the evidence adduced during the trial.

3 It appears that a contention was raised before the trial that there had been no compliance with the provisions of section 42 of the NDPS Act. This contention was rejected by the trial court, and one of the observations made by the learned trial Judge was that 'since the search had been taken at a public place, section 42 had no application'. This proposition as put forth by the trial Judge does not seem to be legally correct. However, the fact remains that the defence was not successful in establishing on facts, that there had been no compliance with the provisions of section 42 of the NDPS Act. The learned counsel for the appellant fairly concedes that there has been no cross-examination of the material witnesses on the relevant aspects.

4 A contention that 'there had been no compliance with the provisions of section 50 of the NDPS Act' was also taken before the trial court, but that contention was also turned down by the trial court. In this regard also, the learned counsel for the appellant submits that though there were a number of suspicious features with respect to the prosecution case, the prosecution witnesses were not sufficiently or properly cross-examined with respect to certain material aspects, and consequently the suspicion was not taken to a higher level to create a disbelief about the truth of the prosecution case.

5 As far as the allegation of the appellant and others having been found in possession of *ganja* is concerned, the trial court has believed the prosecution witnesses in that regard. The learned counsel for the appellant fairly submits that in the absence

of proper and effective cross-examination of the prosecution witnesses, there would be not much to argue on the facts. Moreover, the appellant has already undergone the whole sentence and has been released from prison, thereafter.

6 Under the circumstances, I am unable to come to a conclusion that the conviction of the appellant as recorded by the trial court and the sentence imposed upon her, is not proper or in accordance with law, and/or that the same requires to be interfered with.

7 The Appeal is dismissed.

(ABHAY M.THIPSAY, J)