

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

CRL.A.No. 24 of 2013 ()

AGAINST THE JUDGMENT IN SC 747/2009 of COURT OF IIIrd ADDITIONAL
SESSIONS JUDGE, THRISSUR DATED 05-01-2013

APPELLANT/ACCUSED:

SIVAN, AGED 35 YEARS
S/O.KRISHNAN, KANJIRATHADATHIL HOUSE, RAJAKKAD DESOM
UDUMBANCHOLA, IDUKKI DISTRICT.

BY ADVS.SRI.P.N.SUKUMARAN
SRI.JAISON JOSEPH

RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. CIRCLE INSPECTOR OF EXCISE,
EXCISE ENFORCEMENT AND ANTI-NARCOTIC SPECIAL SQUAD
THRISSUR.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T.RAVIKUMAR, J.

Crl.A.No.24 of 2013

Dated 21st July, 2015

JUDGMENT

This appeal is directed against the judgment of conviction passed by the Court of Additional Sessions Judge-III, Thrissur in S.C.No.747 of 2009. The appellant/accused was tried for the offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (for short `NDPS Act') . He was convicted thereunder and sentenced to undergo rigorous imprisonment for four years and to pay a fine of ₹ 10,000/-. In default of payment of fine he was ordered to undergo rigorous imprisonment for a further period of three months.

2. According to the prosecution, on 2.9.2006 at about 8.45 a.m. PW1, the then Circle Inspector of Thrissur Excise Enforcement and Anti Narcotic Special Squad received a confidential message from CW2, Sadayakumar that a person was seen in Aswani hospital premises carrying a bag. Thereupon, PW1 along with excise party proceeded to Aswani hospital and in the premises they found the appellant/accused carrying a bag. Suspecting that it contained a

narcotic drug he was told that he could insist for an inspection before a Gazetted officer in terms of the provisions under Section 50 of the NDPS Act. Since he required the presence of such Gazetted officer the matter was communicated over phone to the Assistant Excise Commissioner. The Assistant Excise Commissioner reached the spot at about 9.15 a.m. and thereafter in his presence and also in the presence of independent witnesses the accused as also the bag were examined. No contraband articles were obtained from the body of the accused. However, on inspection the bag was found to contain three polythene covers full of particles of some plants and it was identified as Ganja weighing 5 kgs. The matter was appraised to independent witnesses also and thereafter a sample of 25 gms. each was taken from each of the three covers contained in the bag and the samples as well as the contraband articles were seized under Ext.P1 mahazar. On searching the body of the accused ₹ 1,200/- was found in his pocket. A receipt issued from Muvattupuzha Municipality parking ground in respect of motor cycle bearing No.TMT 2399 and a bus ticket for ₹ 44/- for a journey from Muvattupuzha to Thrissur in KSRTC bus, were also obtained. Under Ext.P2 memo the appellant/accused was arrested and the factum of his arrest was intimated to his wife through Ext.P3 telegram. The appellant along with the contraband articles were brought to the Excise Range

Office and Crime No.12 of 2006 was registered against the appellant/accused. The contraband items along with other materials seized were sent to the court under Ext.P6 property list. Later, Ext.P10 forwarding note was sent for getting the samples analysed chemically. After the investigation final report was laid and pursuant to the receipt of the summons the appellant/accused appeared before the court. After complying with the procedures and after hearing both sides charge was framed and it was read over and explained to the appellant/accused. He pleaded not guilty and claimed to be tried. To prove the charge against the appellant/accused prosecution has examined PWs 1 to 6 and got marked Exts.P1 to P14 besides identifying MO1 to MO5 series. After closing the evidence of prosecution the appellant/accused was examined under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances put to him. He had filed a statement to the effect that the documents were relied on by the prosecution for the purpose of implicating him as an accused. Further it was stated therein that MO3 series of Ganja and MO4 bag were not seized from his possession and according to him, they were seized from the possession of one Rappai who was in the custody of the Excise party. It was further stated therein that during 2006 he was running a two wheeler workshop at Rajakkad in Idukki District and that he went to Thrissur only to

purchase spare parts of two wheelers from Pattalam Market through the said Rappai with whom he had previous acquaintance. It was also stated that he used to purchase spare parts through the said Rappai as Rappai got acquaintance with such traders. He had also stated that about 2 to 3 days prior to the alleged incident he intimated Rappai regarding the necessity to have some spare parts for an Enfield Bullet motor cycle and on 1.9.2006 Rappai informed him regarding the availability of such spare parts and also assured him that he would arrange such spare parts at a lower price. On 2.9.2006 at about 10 a.m. he reached the bus stop near Aswani hospital and Pattalam market. While he was waiting in the bus stop the Excise party accompanied by Rappai reached there in their vehicle and on being shown by Rappai he was arrested and forcibly taken to the hospital compound on the allegation that he had sold Ganja to Rappai. He has also stated therein that after taking him inside the compound his shirt was forcibly removed and photographs of himself and Rappai were taken and thereafter they were taken to the Excise office. At the influence of some other persons Rappai was released and a false case was registered against him. According to him, he is totally innocent in the matter. Finding that the appellant was not entitled to be acquitted under Section 232, Cr.P.C. he was called upon to enter on his defence. However, the appellant had not adduced any evidence. After

appreciating the evidence on record the learned Sessions Judge found that the prosecution had succeeded in establishing commission of the offence punishable under Section 20(b)(ii)(B) of NDPS Act by the appellant and consequently convicted and sentenced him as aforesaid.

2. I have heard the learned counsel for the appellant and also the learned Public Prosecutor.

3. Manifold contentions have been raised by the appellant to assail the aforesaid conviction. The appellant mainly contended that the search was vitiated owing to the failure to comply with the mandatory procedures under Section 50 of NDPS Act as the place of occurrence was the car shed in Aswani hospital. The learned counsel for the appellant contended that the evidence of PW1 with Ext.P1 would reveal that its preparation was started at 8.45 a.m. though the superior officer whose presence was required as per the provisions under Section 42 of NDPS Act arrived at the place of occurrence only by 9.15 a.m. It is further submitted that recording of the crime number in the label is also another circumstance which would cast suspicion regarding the seizure. It is further submitted that going by the version of PW1 label was affixed immediately after the seizure of the contraband articles including the

contraband contained in MO4 bag and in such circumstances recording of the crime number in the label is to be viewed suspiciously. Yet another contention taken out by the appellant is that though there was nothing in Ext.P1 to show that the samples taken in three packets from each of the three covers were marked in a particular manner Ext.P14 chemical examination report dated 11.12.2006 would reveal that the samples were marked as S1, S2 and S3. The detecting officer/the investigating officer did not speak about such a marking during his examination and nothing was stated about such marking in Ext.P1 and in such circumstances, it is contended that the failure of the prosecution to explain with respect to such marking would not ensure that the samples reached the chemical analyst in a tamper proof condition. Based on such circumstances it is contended that the learned Sessions Judge erred in arriving at the conclusion that the prosecution has succeeded in establishing conclusively the guilt of the accused for the offence punishable under Section 20(b)(ii)(B) of NDPS Act. Per contra the learned Public Prosecutor contended that the appellant herein was arrested from the spot and as required by him his body was searched in the presence of the Assistant Commissioner of Excise. It is further contended that the contention of the appellant regarding the failure to adhere to the mandatory provisions under Section 42 of NDPS Act is

irrelevant and inconsequential in this case as the search was conducted from a public place and in such circumstances, there was absolutely no necessity to follow the procedures prescribed under Section 42 of NDPS Act. It is submitted that the evidence of PW1, PW4 to PW6 with Exts.P1 to P14 and MOs 1 to 5 are sufficient to fix the culpability on the appellant and in such circumstances, no legal infirmity could be attributed in the findings of the court below as the conclusions were arrived at by the trial court perfectly in tune with the evidence on record. In short, according to the learned Public Prosecutor, the appellant has not made out a case warranting appellate interference.

4. Evidence of PW1 who was the then Circle Inspector of Excise Enforcement and Anti Narcotic Special Squad, Thrissur would reveal that on 2.9.2006 at about 8.45 a.m. he received a confidential message from CW2 Sadayakumar who was then working as Excise Inspector in Thrissur Excise Intelligence and Investigation Bureau to the effect that one person was seen in a suspicious circumstance carrying a bag in the premises of Aswani hospital in Thrissur town. Thereupon, PW1 along with Excise party rushed to the spot and found the accused in Aswani hospital premises carrying a bag. He was intercepted and owing to the suspicion that the bag carried by him contained some contraband

articles including some narcotic drugs he was told that he could insist for an inspection in the presence of a Gazetted officer in terms of Section 50 of NDPS Act. As required by the appellant/accused the Assistant Commissioner of Excise was intimated the same over phone and he came to the place of occurrence at about 9.15 a.m. Thereafter, in his presence the body of the appellant was searched. PW1 further deposed that on such inspection, from the body of the appellant, currency notes worth ₹ 1,200/-, a receipt issued from Muvattupuzha Municipality parking ground in respect of Motor vehicle bearing No.TMT 2399 and a bus ticket for ₹ 44/- for the journey from Muvattupuzha to Thrissur in KSRTC bus were obtained. On inspection of the bag it was found to have contained three polythene covers filled with some particles of plants. The plant particles were identified as Ganja weighing 5 kgs. and thereupon samples of 25 gms. were taken from each of the covers and the samples as well as the contraband were seized under Ext.P1 mahazar. Under Ext.P2 arrest memo the appellant was arrested and Ext.P4 body search report was prepared. The Ganja and the bag were also seized. PW1 registered Crime No.12 of 2006 against the accused upon reaching the office and he produced the thondi articles along with Ext.P6 property list before the court. The motor cycle bearing No.TMT 2399 was then seized from Muvattupuzha Municipal Parking ground under Ext.P7 mahazar and

Ext.P8 inventory was prepared in respect of the same. Later, Ext.P10 forwarding note was prepared for getting the samples analysed. PW1 deposed to the aforesaid effect during his examination. On being cross examined PW1 would depose that he started preparation of Ext.P1 mahazar at about 8.45 a.m. that is, before the arrival of the Assistant Commissioner. At the same time, he would categorically depose that the body of the appellant as also the bag were searched only after the arrival of the Assistant Commissioner. PWs 2 and 3 are the independent witnesses. They were then working as security personnel in Aswani hospital. Evidently, both of them admitted their signatures in Ext.P1 seizure mahazar, Ext.P2 arrest memo and Ext.P4 body search report. But, at the same time, they deposed that they had signed those documents from Excise office and not from the hospital premises. Consequently, they were declared hostile to the prosecution and were cross examined by the Public Prosecutor. PW4 is the Excise Inspector who conducted the investigation by preparing Ext.P11 scene mahazar besides questioning witnesses viz., CWs 1 to 5. He would depose that the place of occurrence is the open space on the western side of the southern car shed of Aswani hospital. PW5, the then Special Village Officer, Thrissur prepared Ext.P12 sketch based on Ext.P11 scene mahazar. True that, Ext.P12 was prepared much after the incident.

PW6 completed the investigation and laid the charge sheet. The contention of the appellant is that going by the case of the prosecution he was found inside the car shed that situates on the western side of southern car shed of Aswani hospital and the information was passed on to PW1 by CW2 while he was in the office and in such circumstances, the procedures contemplated under Section 42 of NDPS Act should have been complied with before search and seizure. It is also contended that PW1 during examination had admitted the fact that the factum of receipt of information was not reduced in writing and intimated to the superior officer. In the said circumstances, the learned counsel for the appellant contended that there was non-compliance with the mandates under Section 42 of NDPS Act and in such circumstances, in the light of the decision of the Hon'ble Apex Court in **Karnail Singh v. State of Haryana ((2009) 8 SCC 539)** the appellant is entitled to be acquitted for the failure to comply with the procedures under Section 42(1) of NDPS Act. For a proper appreciation of the said contention it is only appropriate to refer to the evidence adduced by the prosecution. PW1 is the detecting officer. He would depose that on 2.9.2006 at about 8.45 a.m. he received a confidential message from CW2 who was then working as Excise Inspector to the effect that a person was seen in Aswani hospital premises in suspicious circumstances carrying a bag.

Immediately thereafter he proceeded to Aswani hospital along with Excise party and found the appellant there carrying a bag. Owing to the suspicion regarding possession of a contraband article he was intercepted. Though the defence case was that he was intercepted and arrested while he was standing in the bus stop near Pattalam market and thereafter taken to the premises of Aswani hospital the evidence of PW1 is to the effect that on getting information from CW2 they went inside the premises of Aswani hospital and found the appellant with a bag near the car shed that lies on the western side of the said hospital. It is in the said circumstances that the appellant attempts to canvass the position that going by the documents the appellant was found inside the car shed and therefore, the search should have been conducted only after following the procedures contemplated under Section 42 of NDPS Act. Essentially, the contention of the appellant is that the evidence of PW2 and PW3 would reveal that the car shed in question was meant exclusively for parking the vehicles of the doctors of Aswani hospital and therefore, the place in question ought not to have been treated as a public place to apply the provisions under Section 43 of NDPS Act. I find it difficult to accept the said contention for more than one reason. In this case, the evidence of PW1 who detected the offence is to the effect that the appellant was seen near the car shed. True that, the evidence of

PWs2 and 3 would reveal that the car shed near to which he was seen was one exclusively used for parking the vehicles of the doctors attached to Aswani hospital. Even the case of the appellant that he was found inside the car shed by itself cannot be a reason for holding that he was not found in a public place and in the said circumstances Section 43 of NDPS Act had no application. It is nobody's case that the car shed in question is a place where entry was restricted and any person who enters in the said area was liable for prosecution. In fact, the evidence on record would reveal that it is the area which was meant for parking the vehicles and what has been done by the hospital authorities is put some truss work to make a shed for parking the vehicles of the doctors and very near to that area public used to park their vehicles. In such circumstances, merely because some facilities have been provided for parking vehicles of the doctors would not by itself change the nature of the place and certainly the place in question would continue to be a public place. The learned counsel attempted to canvass the position that the car shed in question would not fall as part of the public place in the light of the decision in **Directorate of Revenue and Another v. Mohammed Nisar Holia ((2008) 2 SCC 370)**. The learned counsel relied mainly on paragraphs 11 to 14 of the said decision and evidently, in that case the place of occurrence was inside a hotel room. The

accused was the occupier of the room concerned. The Hon'ble Apex Court held that though a hotel is a public place a room occupied by a guest may not be a public place. Such a guest is entitled to his right of privacy and therefore, nobody, even the staff of the hotel could walk into his room without his permission. It was held that subject to the ordinary activities in regard to maintenance and/or housekeeping of the room, the guest would be entitled to maintain his privacy. Further it was held that statutory power to make search and seizure by itself could not offend the right of privacy and right to privacy deals with persons and not places. Considering the facts of this case and the fact of the case dealt with by the Hon'ble Apex Court in the decision in **Mohammed Nisar Holia's** case (supra) I have no hesitation to hold that the appellant could not rely on the dictum laid thereunder in view of the facts involved in this case. It is true that though a hotel is a public place a person who hires a room in a hotel is having a right of privacy. But, in the case of a hospital, which is certainly a public place, a parking space meant for parking the vehicles of the doctors by itself cannot be said to fall outside the scope of the said definition even if it is covered with roof. It is to be noted that the prosecution has succeeded in proving that the appellant was arrested from inside the premises of Aswani hospital. The appellant did not have a case that he was there in the hospital premises for taking any

treatment and if the case of the appellant is to be believed he was inside the car shed and going by the version of the prosecution he was seen near the car shed and CW2 was inside the car shed keeping a watch on him. In either case, the appellant could not canvass the position that he is entitled to get an acquittal for the failure to conduct search before complying with the provisions under Section 42 of NDPS Act. Going by the provisions under Section 42 of NDPS Act before conducting search and seizure the factum of receipt of secret information should be communicated to a superior officer in writing. The learned counsel further contended that in the light of the decision in **Mohammed Nisar Holia's** case (supra) the requirement of Section 42 has to be read into Section 43 of NDPS Act. In such circumstances, though there is no strict application of Section 42 of NDPS Act for conducting a search and seizure in a public place it is only desirable to follow the procedures under Section 165, Cr.P.C. While considering the impact of failure to comply with the procedures contemplated under Section 165, Cr.P.C. the decision of the Honble Apex Court in **State of Madhya Pradesh through CBI v. Paltan Mallah and others (AIR 2005 SC 733)** assumes relevance. Going by the dictum laid down therein by the Hon'ble Apex Court an alleged illegality in search by an investigating officer would not vitiate the seizure unless it caused prejudice to the

accused. I do not want to delve into the said question any further in view of the position that even if the place of occurrence is in the parking place carved out for parking the vehicles of the doctors attached to the hospital that by itself would not take that particular portion of the place outside the purview of public place. In this case, evidently, the factum of receipt of such information and consequential seizure was subsequently intimated to the superior officers orally and add to it, it is to be noted that the Gazetted officer in whose presence body of the appellant was searched was also a superior officer of the Excise Department. Taking into account all the aforesaid circumstances, I am of the view that the contention of the appellant that he is entitled to get an acquittal for the non-compliance with the provisions under Section 42 of NDPS Act cannot be sustained at all.

5. As noticed hereinbefore, the appellant raised a contention that though intimation was given to a superior officer by PW1 to comply with the procedures contemplated under Section 50 of NDPS Act Ext.P1 would reveal that he had commenced preparation of the said mahazar earlier than the arrival of the said officer. The precise case of the appellant is that the Assistant Commissioner of Excise who was asked to be present for the search of the appellant reached the place only by

9.15 a.m. whereas preparation of Ext.P1 has commenced at 8.45 a.m. The contention of the learned counsel for the appellant is that it would indicate that the body search was conducted prior to the arrival of the Assistant Excise Commissioner lest the preparation of Ext.P1 could not have been started at 8.45 a.m. In that context, the recital in Ext.P1 and also the testimony of PW1 have to be looked into. It is specifically stated in Ext.P1 that the body search as also the search of the bag carried by the appellant were done only after the arrival of the Assistant Excise Commissioner. PW1 also had deposed to the said effect. Despite the said evidence adduced by the prosecution the appellant had not challenged the same during the cross-examination of the witnesses and at any rate, the defence could not elicit anything to establish violation of Section 50 of the NDPS Act. A scanning of the cross examination conducted on behalf of the appellant would reveal that no direct question challenging the case of the prosecution that the body search of the appellant and the search of the bag carried by him were conducted only after the arrival of the Assistant Commissioner was put to PW1. Thus, it can be seen that the appellant relies only on the fact that preparation of Ext.P1 had commenced at 8.45 a.m. The learned Public Prosecutor submitted that the evidence on record would reveal that despite the body search of the appellant no materials were obtained from his body and

that the contraband article that is, 5 kgs. of Ganja was found kept in three packets only in the bag carried by him and in such circumstances, the compliance with Section 50 of NDPS Act was not actually required. The learned counsel for the appellant contended that the said contention cannot be accepted in the light of the decision of the Hon'ble Apex Court in **State of Rajasthan v. Parmanand and another ((2014) 2 SCC (Cri) 563)**. In the said decision the Hon'ble Apex Court held that if merely a bag carried by a person is searched without there being any search of his person, Section 50 of NDPS Act would have no application. But, at the same time, if the bag carried by him is searched and his person was also searched, Section 50 will have application. In the light of the said decision it is evident that when the bag carried by an accused was searched and at the same time, his body was also searched provisions under Section 50 have to be complied with. In this case, it is evident that for the purpose of complying with the provisions under Section 50 of NDPS Act PW1 told the appellant that he could insist for a search before a Gazetted officer and on his requisition for compliance with Section 50 the Assistant Commissioner of Excise was intimated and he reached the spot at 9.15 a.m. Ext.P1 and also the evidence of PW1 would go to show that a personal search of the appellant and the search of the bag carried by him were conducted only after the arrival of the

Assistant Commissioner. When the appellant failed to challenge the said specific evidence adduced by the prosecution, and as noticed hereinbefore, even to put any direct challenge during the cross examination of the official witnesses he cannot be heard to contend that there was failure to comply with the procedures contemplated under Section 50 of NDPS Act in this case. In short, placing reliance on the decision in **Parmanand's** case (supra) would not enable the appellant to successfully challenge the procedures adopted and to canvass that Section 50 of NDPS Act was not complied with in this case.

6. Another circumstance which escaped the attention of the learned Sessions Judge, according to the appellant, is the recording of crime number on the label affixed on MO4. The learned counsel contended that PW1 did not depose that crime number was written/entered on the label affixed on MO4 at the time of detection and in such circumstances, the appearance of crime number would be sufficient to indicate tampering. There can be no doubt with respect to the position that it was impossible for any detecting officer to incorporate the crime number in the label affixed immediately on seizure of incriminating material at the time of detection. Invariably, it is only after taking the accused along with the contraband materials to the office or

station in question of the detecting officer within which jurisdictional limit the offence was detected that the crime would be registered and certainly only after its registration number of the crime could be entered in the label. Making entry regarding the crime number in the label is essential before it is produced before the court lest it would not be possible for the court to identify the case in relation of which the incriminating material was produced. In the said circumstances, merely because the crime number was written there, in the absence of any other material sufficient to cast any doubt regarding the seizure, it is not sufficient to throw out the case of the prosecution on the ground that the seizure was illegal and inadmissible. Lastly, the learned counsel for the appellant contented that Ext.P14 would reveal that the three packets which were sent for chemical analysis contained the markings S1 to S3 and the detecting officer PW1 did not depose while being examined before the court that such markings were made on the samples by him or at his instance. In Ext.P14 it is specifically stated that the packets containing the samples were received intact. The detecting officer PW1 had deposed to the effect that on finding that MO4 bag contained Ganja kept in three covers three samples each having 25 gms. of Ganja were taken from each of those covers and the covers containing samples and MO4 bag were sealed with his personal seal and were also labelled in

accordance with the procedures contemplated. No serious challenge was made with respect to the said evidence adduced by PW1 and in fact, no question whatsoever was put with respect to the labelling. In such circumstances, merely because in Ext.P14 it is stated that the packets containing the samples were marked as S1 to S3 may not be a reason for canvassing the position that the samples which were seized and sent for analysis did not reach chemical analyst in a tamper proof condition. In the light of the specific statement in Ext.P14 that the samples reached there intact, and in the absence of any other material to hold otherwise there is no reason or circumstance to canvass the position that the materials did not reach for chemical analyst in a tamper proof condition and in the light of the endorsement on Ext.P14 it can be presumed that it reached the chemical analyst in a tamper proof condition. A scrutiny of the impugned judgment would reveal that the evidence adduced by the prosecution were carefully scrutinised and appreciated by the learned Sessions Judge. It was after such appreciation that the court arrived at the conclusion that the prosecution has succeeded in proving the guilt against the appellant. In the light of the discussion as above, I do not find any reason to hold that the learned Sessions Judge has erred in arriving at such a conclusion based on the evidence on record. In other words, I am of the view that the finding of guilt of the appellant for the

offence punishable under Section 20(b)(ii)(B) of NDPS Act is perfectly in tune with the evidence on record. In the said circumstances, the conviction of the appellant for the offence punishable under Section 20 (b)(ii)(B) of NDPS Act is confirmed.

7. Now, the question to be considered is whether the sentence imposed for the conviction under Section 20(b)(ii)(B) of NDPS Act on the appellant calls for any appellate interference. As noticed hereinbefore, for the conviction thereunder he was sentenced to undergo rigorous imprisonment for a period of four years and also to pay a fine of ₹ 10,000/-. In default of payment of the amount of fine he was also ordered to undergo rigorous imprisonment for a further period of three months. The appellant was found in possession of 5 kgs. of Ganja. At the time of occurrence the appellant was evidently, aged 35 years. It has also come out in evidence that he was not involved in any other offence of the like nature. While being heard on the question of the sentence he deposed that his wife is afflicted with mental disease and there is none at home to attend her. The maximum sentence which could be imposed for the said offence considering the quantity of Ganja seized from his possession is 10 years. A perusal of the provisions under the NDPS Act would reveal that for the possession of such materials

up to 20 kgs. the maximum sentence that could be imposed is 10 years. In this case, he was found in possession of 5 kgs. of Ganja. Taking into account the fact that the appellant had not involved in any other offence of like nature and that he is now aged at 44 years I am of the view that a sentence to undergo rigorous imprisonment for a period of 2 years would be the comeuppance taking into account of the nature of the offence committed by him. In the result, while confirming the conviction of the appellant for the offence punishable under Section 20(b)(ii)(B) of NDPS Act the substantive sentence imposed on him is modified and it is reduced to a sentence to undergo rigorous imprisonment for a period of 2 years. The sentence to pay fine of ₹ 10,000/- and in default of payment of the said amount of fine to undergo rigorous imprisonment for a further period of three months are maintained.

The appeal is allowed in part as above.

Sd/-
C.T.RAVIKUMAR
Judge

TKS