

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Appeal No.S-836-SB of 2007

Date of Decision: 21.01.2015

Vijay Shah

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. H.S. Thiara, Advocate
for the appellant.

Mr. Premjit S. Ghumman, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the judgment dated 06.11.2006 passed by the Judge, Special Court, Amritsar, whereby, the accused-appellant has been convicted for offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as `the Act, 1985) and was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.one lac with default clause.

Briefly, the facts of the prosecution version are that the accused-appellant was apprehended by the police while carrying a bag on his shoulder. The search was conducted in the presence of an independent

witness, namely, Ashok Kumar after giving option to the accused. The recovery effected from the appellant was 01 kg. of charas. The appellant faced trial and ultimately, he was convicted and sentenced for the offence as mentioned above.

The judgment of conviction and order of sentence passed by the trial Court is subject matter of challenge in the present appeal.

Apart from the other arguments, learned counsel for the appellant has emphasized his argument that the alleged recovery of charas from the appellant was 01 kg., whereas, as per entry at Serial No.23 in the notification, it comes in the category of small quantity. Learned counsel also submits that as per Section 2(vii)(a) of the Act, 1985, the commercial quantity is greater than the quantity specified in the notification. Keeping in view the recovery, it was a case of non-commercial quantity but the appellant has been convicted and sentenced by considering it as a commercial quantity.

Learned State counsel has not disputed the submissions made by learned counsel for the appellant.

Commercial quantity as defined under Section 2(vii)(a) of the Act, 1985, is reproduced as below :-

“Section 2(vii)(a) “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;”

As per notification specifying small quantity and commercial quantity against Serial No.23, quantity of 01 kg. of charas is commercial. As per Section 2(vii)(a) of the Act, 1985, the commercial quantity means quantity greater than the quantity specified in the notification.

In the present case, the quantity, which has been recovered

from the appellant, cannot be considered as a commercial, whereas, he has been convicted by considering it as a commercial quantity and accordingly, he has been convicted and sentenced for a period of ten years with fine.

This issue came in the judgment of Rajasthan High Court in case **Chanda Soni (Smt.) @ Pushpa vs State of Rajasthan 2010(3) RCR (Criminal) 728**, wherein, it has been held as under :-

“5. For proper consideration of the issue, it is necessary to first refer to the definition of the small and commercial quantity as otherwise provided under the provisions of the Narcotic Drugs and Psychotropic Substances Act. For ready reference, the definition of the commercial quantity and small quantity are reproduced hereunder:

“commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.

“small quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

6. The perusal of the definition keeps no room of doubt that for making it to be a case of commercial quantity, the quantity recovered should be greater, higher or more than the quantity notified in the Gazette as commercial quantity. In the case way, in case of small quantity, the contraband so recovered should be less than the quantity prescribed under the schedule as small quantity. The aforesaid issue was considered by the Himachal Pradesh High Court in the case **Ratto vs State of H.P. 2004(1) RCR (Crl.) 501** and therein discussing the issue, it was held as under:-

“29. We feel that there is no ambiguity in the language of Section 2 (viiia), supra. As such, simple and literal

meaning has to be given to the words “quantity greater than,” so as to hold what would be the commercial quantity.

30. As already noted there is hardly any ambiguity, muchless conflict between Section 2 (vii-a) and the notification as extracted here-in-above for determination of what would be the commercial quantity. By virtue of powers conferred under sub-section (vii-a) of Section 2, Central Government is authorized to notify as to what would be the commercial quantity. Because the “Commercial Quantity” on a plan reading of its definition amongst other things has to be “...greater than the quantity specified by the Central Government by notification....” Under 2001 Act notification supra was issued specifying the quantity for the purpose of Section 2 (vii-a) of the Act. A perusal of this notification indicates that quantity specified is one Kilogram. Various columns of the notification extracted hereinabove to be read in conjunction with the substantive provision of Section 2 (vii-a) of the Act. This also puts a harmonious construction on both, notification as well as Section 2 (vii-a). While determining the quantity under this Sub-section, it has to be greater than one Kg. There is hardly nay doubt regarding either the words one Kg. or the “commercial quantity” which has to be “greater than”, which in our considered view would always mean any quantity more than/bigger than/larger than one Kg. We are further of the view that this provision, and for that matter, notification admits of no other interpretation on its reading. Thus, it cannot be said that one Kg. would be the commercial quantity for the purpose of Section 2 (vii-a), as added by 2001 Act.

31. Another reason to take this view is, that substantive and main provision of the Act is Section 2 (vii-a) which is subject matter of the discussion in this judgment. It is also well known and accepted rule of interpretation of statues that rules, regulations as well as notifications issued thereunder are meant to sub-serve the purpose of main provision of law and not other way round. Notification in the instant case, as extracted herein above, is a delegated legislation. Therefore, it can in no case bypass or over-ride the substantive provision of law and in case of conflict, delegated legislation has to give way to the main provision of law.

32. In this behalf, we may observe that legislature in its wisdom has used the words in this sub-section knowing their significance, as well as import and at the cost of repetition, it needs to be noted that when language is clear, then ordinary meaning to the words needs to be given. As such, no aids either internal or external need to be pressed into service as was urged

on behalf of the respondent to give another meaning.

No other point is raised.

33. In view of the aforesaid discussion, in our view, decisions of this Court in Mathew Andrews British National v. State of H.P., State v. Munshi Ramand Sarvjeet Singh v. State (so far dealing with “commercial quantity” while cancelling the bail) do not lay the correct law, therefore, these are overruled. At the same time, while answering this reference, it is held that in order to be the “commercial quantity” as defined in Section 2 (vii-a) of the Narcotic Drugs and Psychotropic Substances Act, 1995 as amended by Central Act of 2001, it has always to be more than/greater than/bigger than one Kg.”

7. In the aforesaid case, the judgment of the Hon'ble Apex court on the issue of interpretation of statutes was also considered and thereafter an opinion has been recorded. In the present matter, the quantity of contraband namely, “Opium” so recovered is 2.5 Kg. and if we look at the schedule then in the head of commercial quantity also, the quantity narrated therein for “Opium” is 2.5 Kg. and considering the definition of commercial quantity, the quantity of the contraband so recovered should be higher or greater than the quantity notified in the schedule. In the present matter, the quantity of the contraband so recovered being not greater or higher than the quantity provided under the schedule in the head of commercial quantity, thus the conclusion of the aforesaid issue is that the contraband so recovered is not of commercial quantity.”

In view of the said judgment, the alleged recovery, which is more than 01 kg. of charas, would fall in the category of commercial quantity, whereas, the recovery, in the present case, is 01 kg. of charas and the same cannot be considered as a commercial quantity.

The appellant has undergone actual custody of more than nine years as of now. As per custody certificate, the appellant has undergone eight years one month and twenty eight days as on 23.02.2014. The trial Court has not applied its mind while awarding the sentence to the appellant as 01 kg. of charas has been considered as a commercial quantity, whereas, as per provisions of the Act, 1985, the alleged recovery falls under the category of non-commercial quantity.

On perusal of evidence on record and after considering the submissions made by learned counsel for the appellant, the conviction of the appellant, namely, Vijay Shah is upheld but the sentence is reduced to the period already undergone by him. The appellant be released forthwith, if not required in any other case.

Keeping in view the poor condition of the appellant, the sentence of fine is also remitted.

The appeal is disposed of with the said modification.

21.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE