

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

Criminal Appeal S-338-SB of 2003
Date of Decision: September 9, 2015

Pritpal Singh

.....Appellant

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present: Ms. Aditi Girdhar, Advocate
as Amicus Curiae.

Dr. Sukant Gupta, Standing Counsel
for U.T., Chandigarh.

T.P.S.MANN. J. (Oral

The appellant was tried for committing offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the NDPS Act'), for being found in unlawful possession of 500 grams of *charas*. Vide judgment and order dated 19.12.1998, the Judge, Special Court, Chandigarh convicted him for the aforementioned offence and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and

in default of payment of fine, to further undergo rigorous imprisonment for two years.

The case of the prosecution, as noticed by the trial Court in para No.2 of its judgment, is reproduced below:-

"The case of the prosecution in brief is that Sub Inspector Jagir Singh (PW-10) Incharge of police post Maloya was present on Maloya crossing on 14.5.97; SI Mazid Masih and Constables were also with him. He received a secret information that accused Pritpal Singh and one other person Prem Singh were dealing in Charas on large scale. On that day they were also likely to bring charas from the side of village Dadu Majra; on this a Naka was laid near the river of kacha path which leads from Dadu Majra to village Maloya; Amrik Singh PW met the police party; he was also told about the secret information and was joined in the naka party; sometime thereafter, at about 6.00 p.m. accused Pritpal Singh accompanied by another person came from the side of village Dadu Majra. On noticing the police party they tried to slip away; on suspicion they were apprehended. Accused Pritpal Singh was informed by SI Jagir Singh that he doubted that the accused was in possession of some contraband

and he inquired from the accused whether he wanted to be searched in the presence of a Gazetted Officer of police or a Magistrate; accused replied that he wanted to be searched in the presence of Gazetted Officer of Police. Notice Ex.PE was served upon the accused in this respect. After inquiry from the accused SI Jagir Singh sent a wireless message to DSP Surjit Singh (PW-6). He reached the spot within 15-20 minutes. He informed the accused that he was Gazetted Officer of police and again inquired from the accused whether he wanted to be searched in his presence. Accused stated that he has no objection if he is searched in the presence of DSP Surjit Singh. On this DSP Surjit Singh directed SI Jagir Singh to search the accused. SI Jagir Singh first offered his own search to the accused and thereafter took personal search of the accused. From the right side dub of accused under the shirt charas wrapped in a glazed paper was recovered. On weighment it was found to be 500 grams. Ten grams was separated as sample. The parcels were prepared; parcel of residue Charas is EX.P1 and sample Charas parcel is EX.P2. Both the parcels were sealed with the seal

of 'JS'. Both the parcels were sealed and sample seal was also prepared. Seal after use was handed over to PW Amrik Singh. The case property was taken into possession through recovery memo Ex.PD which was attested by Amrik Singh PW, ASI Mazid Masih and DSP Surjit Singh. SI Jagir Singh sent ruqa Ex.PG to the Police Station and on its basis formal FIR EX.PG/1 was recorded in the Police Station. He also prepared rough site plan of the place of recovery Ex.PH. On return to the police station SI Jagir Singh produced the accused, case property and Amrik Singh PW before Inspector Mani Ram (PW9) SHO PS Sector 39, Chandigarh. Inspector Mani Ram (PW-9) after verifying the investigation sealed the case property with his own seal bearing impression 'MR' in addition to the seal 'JS' which was already there. Thereafter the case property and parcels were deposited in the custody of MMHC Nand Kishore (PW-4). On 2.6.97 HC Baljit Singh MMHC PS Sector 39, Chandigarh handed over the sample charas to constable Nirmal Singh (PW-5) who deposited the same in the office of C.F.S.L. on 3.6.97. The Analyst of the C.F.S.L. analysed the

sample and according to his report Ex.PA it was of charas. After the completion of investigation, the accused was sent up to face trial as aforesaid."

The plea of the appellant was that of innocence. Accordingly, he pleaded not guilty to the charge under Section 20 of the N.D.P.S Act and claimed trial.

In support of its case, the prosecution examined PW1 Anil Kumar Srivastawa, Junior Scientific Officer; PW2 HC Balraj Singh; PW3 HC Baljit Singh; PW4 HC Nand Kishore; PW5 Constable Nirmal Singh; PW6 DSP Surjit Singh; PW7 Amrik Singh; PW8 Constable Yash Pal; PW9 Inspector Mani Ram; PW10 SI Jagir Singh and PW11 HC Mange Ram.

When examined under Section 313 Cr.P.C., the appellant reiterated his plea of false involvement. According to him, nothing was recovered from him and false recovery of contraband has been shown from him. In defence, the appellant examined his father Mohan Singh as DW1.

The trial Court, after hearing learned counsel for the parties and perusing the record, believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

Aggrieved of his conviction and sentence, the appellant filed the present appeal on 10.2.2003. As there was a delay of three years, ten months and twenty three days in filing of the appeal, the appellant also filed an application under Section 5

of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay. Vide order dated 24.4.2003, this Court condoned the delay in filing of the appeal. The appeal was, thereafter, admitted and recovery of fine ordered to be stayed. Subsequently, on 4.7.2003, the appellant was granted the concession of suspension of sentence of imprisonment for the reason that out of the sentence of ten years imposed upon him, he had already undergone more than six years of imprisonment.

Learned counsel for the appellant has submitted that though the appellant was convicted and sentenced by the trial Court on 19.12.1998 yet before the appellant could file the appeal for challenging his conviction and sentence, the NDPS Act came to be amended on 2.10.2001 whereby the structure of punishment was rationalised by providing graded sentences linked to the quantity of the contraband in relation to which the offence had been committed. The Amending Act introduced the concept of “commercial quantity” in relation to the contraband to mean any quantity greater than the quantity specified by the Central Government. Further, the expression “small quantity” defined as any quantity lesser than the quantity specified in the notification. It is submitted that the alleged recovery of 500 grams of charas would fall in the third category i.e. “medium quantity” for which the amended Act provided any sentence of imprisonment which may extend upto 10 years and with fine which may extend

to Rs. 1,00,000/-. Submitting that the appellant has already undergone a period of about four years and seven months behind the bars, prayer has been made for reducing the sentence of imprisonment as well as of the fine imposed upon the appellant by the learned trial Court.

Per contra, learned Additional Public Prosecutor for U.T., Chandigarh has submitted that the recovery of the contraband i.e. 500 grams of charas which was effected from the appellant on 14.5.1997 and on the date of commission of the crime, the appellant if found convicted for the offence under Section 20 of the NDPS Act, was required to undergo minimum imprisonment for ten years and fine of Rs.1,00,000/- and he cannot be extended the benefit of Amending Act which came into force from 2.10.2001.

The Narcotic Drugs and Psychotropic Substances Act which came into force in the year 1985 contemplated severe and deterrent punishment as evident from the minimum term of imprisonment prescribed in Section 20 thereof. Equal stringent were the bail provisions. So much so the offenders facing the trial could hardly obtained bail. The trial used to proceed for long periods and the accused would keep on languishing in jail. Only exception was in the case of drug addicts who could prove that the narcotic drugs or the psychotropic substance in small quantity in his possession was intended for their personal consumption

and not for sale or distribution. The provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 were amended by the Amending Act 9 of 2011 which rationalised the structure of punishment by providing graded sentences linked to the quantity of the contraband in relation to which the offence was committed. The strict provisions were restricted only to those offenders, who indulged in serious offences. This is clear from the statements of Objects and Reasons appended to the Bill declaring this intention thus:-

"Statement of Objects and Reasons :-
Amendment Act 9 of 2001 :- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires

rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences."

In view of the Amending Act 9 of 2001, the sentencing structure underwent a drastic change. The concept of "commercial quantity" was introduced to mean any quantity greater than the quantity specified by the Central Government by notification in the official Gazette. Similarly expression "small quantity" was defined in Section 2 (xxiiia) to mean any quantity lesser than the quantity specified in the notification. The third quantity which is some thing in between the commercial quantity and the small quantity was the effect of the rationalisation of sentencing structure carried out by the Amending Act 9 of 2001. However, Section 41 of the Amending Act 9 of 2001 limited the application or exclusion of the amending provisions to all those cases which were pending before the Courts or under investigation at the commencement of the Amending Act 9 of 2001 and not to the cases pending in appeal. Thus, all cases, pending trial or under investigation as on 2.10.2001 were required to be disposed of in accordance with the provisions of 1985 Act as amended by the Act of 2001. In other words, the benefit of the rationalised sentencing structure was made applicable to these two categories. The proviso, however, made an exception and excluded the application of the rationalised sentencing structure

to cases pending in appeal.

The constitutional validity of Section 41 of the Amending Act 9 of 2001 was upheld by the Hon'ble Supreme Court in **Basheer N.P.Basheer Vs. State of Kerala, 2004(1) R.C.R. (Criminal) 1008**, by holding as under:-

“Inasmuch as Act 9 of 2001 introduced significant and material changes in the parent Act, which would affect the trial itself, application of the amended Act to cases where the trials had concluded and appeals were pending on the date of its commencement could possibly result in the trials being vitiated, leading to retrials, thereby defeating at least the first objective of avoiding delay in trials. The accused, who had been tried and convicted before 2.10.2001 (i.e. as per the unamended 1985 Act) could possibly urge in the pending appeals, that as their trials were not held in accordance with the amended provisions of the Act, their trials must be held to be vitiated and that they should be re-tried in accordance with the amended provisions of the Act. This could be a direct and deleterious consequence of applying the amended provisions of the Act to trials which had concluded and in which appeals were filed prior to the date of the Amending Act coming into force. This would certainly defeat the first objective of avoiding delay in such trials. Hence, Parliament appears to have removed this class of cases from the ambit of the amendments and excluded them from the scope of the Amending Act so that the pending appeals

could be disposed of expeditiously by applying the unamended Act without the possibility of reopening the concluded trials.

Thus, in our view, the Rubicon indicated by Parliament is the conclusion of the Trial and pendency of appeal. In the cases of pending trials, and cases pending investigation, the trial is yet to conclude; hence, the retrospective mollification of the rigour of punishment has been made applicable. In the cases where the trials are concluded and appeals are pending, the application of the amended Act appears to have been excluded so as to preclude the possible contingency of reopening concluded trials. In our judgment, the classification is very much rational and based on clearly intelligible differentia, which has rational nexus with one of the objectives to be achieved by the classification. There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2.10.2001, but the appeal is filed after 2.10.2001, it cannot be said that the appeal was pending as on the date of the coming into force of the Amending Act, and the amendment would be applicable even in such cases. The observations of this Court in Nallamilli's case (supra) would apply to such a case. The possibility of such a fortuitous case would not be strong enough reason to attract the wrath of Article 14 and its constitutional consequences. Hence, we are unable to accept the contention that the proviso to Section 41 of the amending Act is hit by Article 14".

The aforementioned observations made by the Hon'ble Supreme Court, as underlined by this Court, leads to one and the only conclusion that in case the trial had just concluded before 2.10.2001 but the appeal is filed after 2.10.2001, the offender in question would also be entitled to the beneficial provisions in the matter of sentence of imprisonment and fine. To be precise, the present appellant was convicted on 19.12.1998. On that day, he was liable to be sentenced to undergo minimum imprisonment for ten years and to pay minimum fine of Rs. 1 lac. However, upto 2.10.2001 when the Amending Act 9 of 2001 came into operation, the appellant had not filed any appeal against his conviction and sentence. After he was convicted and sentenced, he started making arrangements for filing the appeal against his conviction and sentence which appeal came to be filed on 10.2.2003. As on 2.10.2001, the appellant had not filed any appeal, therefore, the proviso to Section 41 of the Amending Act 9 of 2001 did not debar him from seeking benefit of beneficial provisions. In that situation, he could be awarded imprisonment which may extend upto ten years and also of fine which may extend to Rs. 1 lac instead of being sentenced to undergo minimum imprisonment for ten years and paying minimum fine of Rs. 1 lac.

It is not disputed that the appellant after being arrested on 14.5.1997 had remained in custody throughout the

trial of the case. Even after his conviction, he remained behind bars and it was only on 4.7.2003 that this Court had ordered his release on bail on his furnishing necessary bonds. Thus, it is clear that the appellant had already undergone a period of about six years and two months before he was released on bail. During his examination under Section 235 Cr.P.C. before the trial Court, the appellant had pleaded that he was a poor person and a rickshaw puller. Besides, he had been ironing the clothes so as to support his family.

Taking into consideration the totality of circumstances, this Court is of the considered view that the sentence of imprisonment and fine of the appellant deserves to be reduced.

Resultantly, the conviction of the appellant under Section 20 of the N.D.P.S. Act is maintained. However, his sentence of imprisonment is reduced to the one already undergone by him. The amount of fine is also reduced to Rs.10,000/- and in default of payment of fine, the appellant shall undergo rigorous imprisonment for six months.

The appeal is, accordingly, disposed of.

September 9, 2015
amit rana/ajay-1

(T.P.S. MANN)
JUDGE