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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th March, 2015

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Crl.A. 141/2013

RASHMI

..... Appellant

Through: Mr Ajay Verma and Ms Neha Singh,
Advocates

versus

STATE

..... Respondent

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State alongwith SI
Varun Dalal from Police Station Gulabi
Bagh, Delhi

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Crl.A. 496/2013 & Crl. MB 8655/2014

UTPAL BARMAN

..... Appellant

Through: Ms Saahila Lamba, Advocate

versus

STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State alongwith SI
Varun Dalal from Police Station Gulabi
Bagh, Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common judgment, I shall dispose of two criminal appeals being Crl. Appeal Nos.141/2013 and 496/2013 filed by appellants – Rashmi and Utpal Barman respectively as the same have arisen out of a common judgment dated 06.09.2012 and order on sentence dated 13.09.2012 passed by learned Special Judge, NDPS in Sessions Case No.22/2011 arising out of

FIR No.26/2011 under Section 20 of Narcotic Drugs and Psychotropic Substances Act (for short, the “NDPS Act”) Police Station Gulabi Bagh, Delhi whereby appellants were convicted under Section 20 of the NDPS Act and were sentenced to undergo rigorous imprisonment for five (5) years and to pay fine of Rs.25,000/-; in default to undergo simple imprisonment.

2. During the course of arguments, learned counsel for the appellants submits that they do not challenge the legality of the order of conviction vide which the appellants were convicted under Section 20 of the NDPS Act, but prayed for leniency in quantum of sentence on the ground that out of five years sentence awarded to them, they have already undergone sentence for a period of four years. Moreover, no minimum sentence is prescribed under Section 20 of the NDPS Act. The appellants were ordered to be released on bail but due to financial constraints they could not avail that benefit. Moreover, the appellant – Utpal Barman was only twenty years of age as such the appellants be released on the period already undergone and the fine be also reduced to the minimum. In support of their submissions, reliance has been placed on a judgment of this Court in ***Lakhi Chand Paswan v State (NCT of Delhi)*** [Crl. Appeal No.868/2013). The prayer is opposed by learned Additional Public Prosecutor for the State on the ground that the appellants have already been treated very leniently and there is no ground for reduction of sentence.

3. So far as the conviction of appellants under Section 20 of the NDPS Act is concerned, the same was rightly not challenged by the learned counsel for the appellants inasmuch as according to prosecution case, the appellants were found in possession of 16.600 gms and 16.640 gms of *ganja*

respectively. In order to substantiate its case, prosecution in all examined 11 witnesses. The case of the appellants was one of denial simplicitor and it was pleaded that that they have been falsely implicated in this case. After scrutinizing the testimony of prosecution witnesses which revealed that on 21.03.2011 both the appellants were apprehended at about 7.30 pm near Kishan Ganj railway station by the patrolling party comprising of ASI Sunder Singh, HC Sunil and Ct. Anil when the appellants were found sitting inside the bushes in suspicious condition and were found carrying travel bags. Since the appellants could not give any satisfactory reply regarding the bags, they were checked and on opening the bags, packets having *ganja* were recovered. The SHO was informed about the recovery. Notice under Section 50 of the NDPS Act was served upon the appellants/accused apprising them that they had the right to be searched in the presence of a gazetted officer, however, they refused to be searched in the presence of any gazetted officer. Thereafter, remaining proceedings regarding recovery of *ganja*, taking weight of sample, sending them to FSL were completed and as such the appellants were convicted for the offence alleged against them. No fault can be found with the findings of the learned Trial Court.

4. Coming to the quantum of sentence, the appellants were awarded sentence of five years. As per the nominal rolls they have already undergone a period of four years. In ***Lakhi Chand Paswan*** (supra), reliance was placed on ***Edom Simon Chimezie v. State of NCT of Delhi*** [Crl.Appeal No. 613/2014] wherein the accused was convicted under Section 21(b) of NDPS Act and Section 14 of the Foreigners Act and sentenced to undergo maximum period of imprisonment for four years and fine. Relying upon the decision of Hon'ble Apex Court in ***E. Michael Raj v. Intelligence Officer,***

Narcotic Control Bureau, (2008) 5 SCC 161 and a decision of a Coordinate Bench of this Court in Crl.A.No.466/2014 titled as *State v. Hari Krishan Guthala & Ors.* rendered on 21st April, 2014 it was held that the sentence awarded to the appellant was quite excessive and the appellant who remained behind the bars for two years four months and twenty one days, was sentenced to the period already undergone. As such relying upon these judgments in *Lakhi Chand Paswan* (supra), since the appellants had already undergone more than four years, as such the substantive sentence was reduced to the period already undergone by the appellants.

5. In view of the nominal rolls of the appellants submitted by the Superintendent Jail, according to which appellants have already undergone sentence of four years, coupled with the fact that as per the status report submitted by the State, the appellants are not involved in any other case, the substantive sentence awarded to the appellants is modified to the period already undergone by them while keeping the sentence of fine unaltered. Accordingly, the appeals are partly allowed.

Trial Court record be sent back forthwith alongwith a copy of this judgment.

A copy of this order be also sent to the Superintendent Jail for information and compliance.

(SUNITA GUPTA)
JUDGE

March 27, 2015
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