

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th January, 2015

+ CRL.A. 868/2013 & CrI.M.A.No.20235/2014

LAKHI CHAND PASWAN Appellant

Through: Mr Jatin Rajput, Advocate
(DHCLSC)

versus

STATE (NCT OF DELHI) Respondent

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State along with
Insp. Satyapal Singh, PS Old Delhi
Rly. Station

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. This is an appeal u/s 374 (2) Cr.P.C challenging the judgment and order on sentence dated 24th January, 2012 passed by Sh. Narinder Kumar, Special Judge (Central), Delhi vide which the appellant was convicted under Section 20 of Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and sentence to undergo rigorous imprisonment for five years and to pay fine of Rs.50,000/-, in default to further undergo rigorous imprisonment for three months.

2. The appellant has moved an application bearing CrI. M.A. No. 20235/2014 for releasing him on the period already undergone. During the course of arguments, learned counsel for the appellant did not challenge the legality of the order of conviction vide which the appellant was convicted under Section 20 of NDPS Act, but prayed for leniency in quantum of sentence on the ground that out of five

years sentence awarded to the appellant, he has already undergone sentence for a period of more than four years. As such, he be released on the period already undergone. For raising this submission, reliance was placed on ***Crl.Appeal No. 613/2014 Edom Simon Chimezie v. State of NCT of Delhi.***

3. Conviction of the appellant was rightly not challenged by the learned counsel for the appellant, inasmuch as, as per the prosecution case, the appellant/accused was found in possession of 15 kilos of *ganja*. In order to substantiate its case, prosecution in all examined 10 witnesses. Statement of accused was one of denial simplicitor and it was pleaded that the accused along with co-accused had come from Nepal for work and, as such, were present at the platform of Old Delhi Railway Station. They were taken to police station and then falsely implicated in this case. After scrutinising the testimony of the prosecution witnesses, the learned Trial Court convicted the appellant for offence under Section 20 of NDPS Act. No fault can be found with this finding of the learned Trial Court.

4. Coming to the quantum of sentence, in ***Edom Simon Chimezie***(supra,) 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 Burea***, (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.

5. Learned Additional Public Prosecutor for the State submits that there is no minimum sentence prescribed under Section 20 of NDPS Act, 1985. It is further submitted that the appellant is not involved in any other case.

6. Keeping in view the period of custody coupled with the fact that the appellant is not involved in any other case, his overall conduct has been reported to be satisfactory by the Superintendent Jail, the substantive sentence awarded to the appellant is modified to the period already undergone by him while keeping the sentence of fine as intact.

7. Accordingly the appeal is partly allowed. The substantive sentence of the appellant is reduced to the period already undergone. He is further directed to pay fine as imposed by the learned Trial Court in default to undergo rigorous imprisonment for three months.

Copy of the judgment be sent to the Superintendent, Jail for information to the appellant and compliance.

Copy of the judgment along with Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

JANUARY 27, 2015

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