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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.08.2015

CRL.A.670/2015

ANNASTANCIA BHULE NDLOVU Appellant

Through: Mr. Vikas Gautam, Advocate

versus

NARCOTICS CONTROL BUREAU Respondent

Through: Mr. Mohit Arora, Advocate for Mr. B.S.
Arora, SPP

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an appeal under section 374 Cr.P.C. assailing the order on sentence dated 25.03.2015 passed by the Sessions Court, NDPS Act, New Delhi whereby the appellant was convicted for offences under section 9A and 25A of NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of one year and six months as well as fine of Rs.50,000/-, in default of payment of fine to undergo simple imprisonment for two months.

2. Learned counsel appearing on behalf of the appellant fairly conceded that the latter pleaded guilty before the trial court on the charge of having been found in possession of 6.3 Kg of Ephedrine Hydrochloride, which is a controlled substance.

3. Counsel for the appellant only urges this court to take a lenient view in the matter since the appellant is a mother of three minor children, who reside in South Africa. Counsel for the appellant states that, the sentence imposed on the appellant is harsh and urges this court to release the appellant on the sentence already undergone by her which is eleven months twenty three days up to 24.07.2015.

4. Counsel for the appellant places reliance on the decision of this Court in **Narcotics Control Bureau vs. Nthadiseng Josephina Bulaya & Anr.,** reported as **2015 IV AD (DELHI) 561** to urge that in that case although the accused was held guilty of possessing 50 Kg of Pseudoephedrine and sentenced for a period of one year, the appeal filed on behalf of Narcotics Control Bureau seeking enhancement of the sentence was dismissed by this Court.

5. On the other hand, counsel appearing on behalf of Narcotics Control Bureau has invited my attention to a decision of the Supreme Court in **Union**

of India vs. Kuldeep Singh reported as (2004) 2 SCC 590 to urge that no leniency should be shown to the appellant. Counsel appearing on behalf of the Narcotics Control Bureau has also invited my attention to a report of the United Nations Office of Drugs and Crime to urge that the controlled substance which the appellant admitted to have been carrying has become a source of making Methamphetamine which is a matter of grave concern owing to its endangering public health, particularly, since Methamphetamine is the cheapest narcotic available in developing countries like India.

6. In the present case, it is observed that the appellant was admittedly carrying the controlled substance when she was detained at the IGI Airport. It is also an admitted position that the controlled substance was being carried in a secret compartment of her luggage. The Supreme Court in *Union of India vs. Kuldeep Singh* (*supra*) observed as follows:-

“9. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.”

The Hon'ble Supreme Court further went on to observe as under:-

“13. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

14. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

15. In *Dhananjay Chatterjee v. State of W.B.*: (1994) 2 SCC 220: 1994 (3) RCR (Cr.) 359 (SC), this Court has observed that shockingly large, number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

16. Similar view has also been expressed in *Ravji v. State of Rajasthan*, (1996) (2) SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

17. **An offence relating to narcotic drugs or psychotropic substances is more heinous than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides shattering the economy of the nation as well. That the legislature intended to make the offences under the Act so serious to be dealt with sternly and with an iron hand is made clear by providing for enhanced penalties, including even death sentence, in certain class of cases, when convicted for the second time.**

18. It is true as contended by learned counsel for the respondent-accused that no minimum sentence is prescribed, but the sentence imposed should fit in with the gravity of offence committed but in the teeth of the other indications in the enactment, mere absence of a provision for minimum sentence is no reason or justification to treat the offences under the Act as any less serious as assumed by the High Court. It was highlighted by learned counsel for the respondent that the Court had a discretion which according to him has been rightly exercised. **The High Court seems to wholly misdirected itself not only as to the**

seriousness of the offences but also with reference to the relevant consideration which should weigh with the Court in exercising its discretion.”

7. It is observed that there is a growing trend in developing countries where numerous impressionable youngsters as well as minors are falling prey to drug abuse. Therefore, this court would be failing in its duty, if offenders such as the appellant, are shown any leniency in the matter of sentence. Insofar as, the decision relied upon by the appellant is concerned, it is observed that there is no right of negative equality and each case has to be determined on its own facts and circumstances.

8. The appeal is accordingly dismissed.

SIDDHARTH MRIDUL, J

AUGUST 03, 2015
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