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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. No. 134/2015

JASRAM @ JASSO

..... Appellant

Through :Mr. Aditya Wadhwa and Mr.
Deboriyo Maulik, Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Dr. M.P. Singh, APP

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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10.11.2016

Appellant has been convicted by the trial court under Section 18(b) of the Narcotic Drugs and Psychotropic Substances **Act**, 1985 ("NDPS Act", for short) and sentenced to undergo rigorous imprisonment for five years with fine of ₹20,000/-, in default of payment of fine, to undergo simple imprisonment for six months. Appellant has also been convicted under Part II of Section 174-A of the IPC and sentenced to undergo rigorous imprisonment for six months with fine of ₹1,000/-, in default of payment of fine, to undergo simple imprisonment for one month. Both the sentences have been directed to run concurrently, inasmuch as benefit of Section 428 Cr.P.C. has also been given to appellant.

Learned counsel for the appellant submits that 1.5 kg opium was recovered from the appellant by the members of raiding party, comprising of police officials, namely, HC Vijay Pal Singh, Constable Rakesh, Constable Satpal and SI Satish Rana. He submits that conviction of appellant on merits, is not being challenged. However, conviction ought to be under Section 18(1) (c), in view of the quantity recovered from the appellant.

It is submitted that 1.5 kg of opium which was recovered from the appellant, falls in the category of 'intermediate quantity' thereby attracting the conviction and punishment under Section 18(1)(c) of the NDPS Act. It is further submitted that trial court was conscious of this fact, thus, has awarded sentence of only five years to the appellant. He further submits that Section 18(1)(b) of the NDPS Act deals with the 'commercial quantity' for which minimum sentence of rigorous imprisonment of ten years has been prescribed.

Clause 92 of the table, as notified under Section 2 of the NDPS Act prescribes 25 grams to be a small quantity and 2.5 kg of opium to be commercial quantity. It is, thus, contended that quantity of opium between 25 grams to 2.5 kg will fall within the ambit and scope of intermediate quantity.

Section 18(1)(a) of the NDPS Act prescribes sentence of imprisonment for small quantity and Section 18(1)(b) of the NDPS Act prescribes sentence of imprisonment for commercial quantity; whereas Section 18(1)(c) of the NDPS Act prescribes substantive sentence, in any other case. Accordingly, the quantity recovered in this case would attract the imprisonment as prescribed under Section 18(1)(c) of the NDPS Act and for this reason, trial court has awarded a lesser sentence than the minimum sentence of ten years as prescribed under Section 18(1)(b) of the NDPS Act.

Learned counsel for the appellant has next contended that appellant is aged about 45 years. He has no previous criminal record. He is an extremely poor person. His wife and three minor children are solely dependent on him. Appellant is the only bread-earner in the family. In the absence of appellant, who is in incarceration for about three years and seven months, the whole family is at the verge of starvation.

Keeping in mind the facts and circumstances as detailed hereinabove, sentence of the appellant is reduced to four years from five years, keeping in mind Section 18(1) (c) of the NDPS Act, which is attracted in this case. Sentence of simple imprisonment of six months in default of payment of

fine of ₹20,000/- is also reduced to one month. All the sentences shall run concurrently.

Appeal is disposed of in the above terms. Copy of the order be sent to the Jail Superintendent for serving it on the appellant and for compliance.

A.K. PATHAK, J.

NOVEMBER 10, 2016
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