

\$~24

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

+ CRL.A. 1110/2015 & CRL.M.A.15903/2015

STATE (NCT) OF DELHI

..... Appellant

Through: Ms.Kusum Dhalla, APP for the State
with SI Omvir Dabas, Narcotics Cell,
Crime Branch

versus

SAMIULLAH SHEIKH

..... Respondent

Through: Mr.S.K.Sethi, Advocate along with
respondent in person

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **18.02.2016**

1. The State is aggrieved by the order on sentence dated 22nd January, 2015 passed in Sessions Case No.7A/13 in respect of FIR No. 37/2008 registered at PS Narcotics Branch whereby the respondent Samiullah Sheikh though convicted for committing the offence punishable u/s 20 (b)(ii) (B) & 29 of NDPS Act, was sentenced to imprisonment for the period he has already spend in custody and to pay a fine of ₹ 1,000/- in default SI for one month.

2. On behalf of the State, Ms.Kusum Dhalla, APP has submitted that it is a case of recovery of charas and the minimum sentence prescribed is 10 years. In case of recovery of charas, learned Trial Court could not have considered the quantity of charas to be on percentage of THC in sample of

charas basis. Since it was a case of recovery of commercial quantity of charas, he should have been awarded the minimum sentence provided under Section 20 & 29 of NDPS Act.

3. Notice of this appeal was sent to the respondent. Respondent came from Bihar but due to poor economical condition was not in a position to engage a counsel.

4. Mr.S.K.Sethi, Advocate was appointed as amicus curiae in the matter and thereafter the case was listed for hearing today.

5. Learned APP for the State has submitted that in the Sessions Case No.18/08 (FIR No.37/08) PS Narcotics Branch, charge for the offence punishable under Section 20 & 29 of NDPS Act was framed against the respondent Samiullah Sheikh in recovery of 4 kg of charas from his possession which is commercial quantity. The learned Special Judge convicted the respondent for committing the offence punishable under Section 20 & 29 of NDPS Act but on the basis of percentage of THC in CRCL result, treating the quantity of charas recovered to be 56 gms, a small quantity, sentenced him to the period already undergone by him in custody. On behalf of the State it has been submitted that this appeal has been preferred with a prayer that sentence prescribed by law for conviction under Section 20 & 29 of NDPS Act may be awarded to the respondent.

6. Mr. S.K.Sethi, amicus curiae appointed for the respondent has drawn the attention of this Court to the judgment and order both dated 21st April, 2010 passed in case of co-convicts Meera Devi and Vikram Paswan whereby they were also sentenced to the period already undergone in custody for the reason that the quantity of charas recovered from Meera Devi was considered 'small quantity' in view of CRCL result. Mr.S.K.Sethi

has further submitted that State has never challenged judgment and order on sentence in respect of the co-convicts and State cannot be permitted to pick and choose and have different yardsticks for the convicts in the same case wherein the quantity of charas has been shown on the basis of CRCL report showing the percentage of THC in the recovered substance.

7. Learned APP for the State does not dispute that the judgement in the case of co-convicts has not been challenged by the State. Here in the instant case also the appeal is only against the quantum of sentence. The finding of the learned Special Judge regarding the quantity of charas recovered from the respondent Samiullah Sheikh to be 56 gms (in view of the CRCL report that the sample contained 1.4% of THC) has not been challenged by the State.

8. On perusal of the trial Court record, following facts are established:-

(i) The respondent was facing trial along with other two co-accused, namely, Meera Devi and Vikram Paswan.

(ii) Meera Devi was found in possession of 500 gms of charas whereas Vikram Paswan was charged for the offence punishable under Section 20/29 of NDPS Act for criminal conspiracy as no recovery was effected from him.

(iii) Vide order dated 9th September, 2009 fresh sample from the contraband allegedly recovered from the possession of accused Meera Devi was sent to Central Revenue Control Laboratory, New Delhi (CRCL) for ascertaining of THC (Tetrahydrocannabinol) constituent.

(iv) As per the CRCL report sample contained 1.1% THC thereby making the net quantity of charas recovered from the accused Meera Devi to be 5.5 grams only which is a small quantity.

(v) Meera Devi & Vikram Paswan were in custody with effect from 6th

April, 2008 and vide order dated 21st April, 2010 they were awarded the substantive sentence for the period already spent by them in custody.

(vi) In case of respondent Samiullah Sheikh also charge under Section 20 of NDPS Act was framed vide order dated 8th April, 2009. Separate charge under Section 29 of the NDPS Act was also framed. To the said charges, Respondent Samiullah Sheikh pleaded not guilty and claimed trial.

(vii) While sentencing respondent Samiullah Sheikh, recording that he was arrested on 4th April, 2008 and he remained in judicial custody till 11th December, 2009, recovery of charas from his possession being taken as 56 grams (on the basis of 1.4% of THC), he was also ordered to be sentenced for the period already undergone by him in custody in this case. The period spent by him in judicial custody as recorded by the learned Special Judge, was about one year and eight months.

9. The co-convicts Vikram Paswan and Meera Devi have been sentenced to the period spent by them in judicial custody and the present respondent has also been dealt with by the learned Special Judge by awarding him the sentence already spent by him in judicial custody. Since the basis of the finding by the learned Special Judge treating the quantity to be 'small' was never challenged, the prayer of the State to enhance the sentence awarded to the respondent needs to be rejected.

10. The appeal is dismissed.

11. The efforts made by amicus curiae, Mr.S.K.Sethi, within a short span of time and able assistance rendered by him in this matter are appreciated.

PRATIBHA RANI, J.

FEBRUARY 18, 2016/‘pg’