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

% *Date of Decision: December 12, 2017*

+ **CRL.A. 355/2013**

BALDEV SINGH

..... Appellant

Through: Mr.Anwesh Madhukar,
Advocate for DHCLSC with
Mr.Pranjal Shekhar, Advocate

versus

DIRECTORATE OF REVENUE INTELLIGENCE Respondent

Through: Mr.Satish Aggarwal, Advocate

PRATIBHA RANI, J. (Oral)

1. The appellant has preferred the instant appeal under Section 374 CrPC against the judgment dated 4th January, 2013 and order on sentence dated 9th January, 2013 and order on sentence dated 9th January, 2013 whereby he has been convicted for committing the offence punishable under Section 21(c) NDPS Act and sentenced to undergo RI for 15 year with fine of ₹1,50,000/- and in default of payment of fine, to undergo SI for a period of 6 months with benefit of Section 428 Cr.P.C.

2. Briefly stating the case of prosecution is that on 2.6.2009 at about 7.20 pm the appellant was found in possession of commercial quantity of 'Heroin' which was being carried by him in Scorpio No.DL-4C-NB-1092. The appellant was arrested from near Metro

Pillar No.763, Uttam Nagar while he was proceeding towards Mohan Garden side. After completion of investigation, the appellant was chargesheeted for committing the offence punishable under Section 21 of NDPS Act.

3. On the basis of material produced by the prosecution, the appellant was charged for committing the offence punishable under Section 21(c) of NDPS Act. The prosecution produced 16 witnesses in all to prove its case. After trial, relying on the testimony of prosecution witnesses, the learned Trial Court convicted the appellant for the offence punishable under Section 21(c) of NDPS Act and sentenced him in the manner stated above.

4. The appellant has been produced from judicial custody and represented by Mr.Anwesh Madhukar, Advocate from Delhi High Court Legal Services Committee (DHCLSC).

5. The appellant has submitted a hand written application in 'Gurumukhi' that he does not want to challenge his conviction and has prayed for taking a lenient view on the quantum of sentence. Learned counsel for the appellant submits that he has translated the contents of the application in English after verifying its correctness. Copy of the application has also been given to learned counsel for the respondent.

6. Since the appellant is not challenging his conviction and has prayed for a lenient view on the quantum of sentence, Mr.Satish Aggarwal, learned counsel for Directorate of Revenue Intelligence submits that the sentence awarded to the appellant may not be reduced for the reason that he is a previous convict which has also been noted by the learned Trial Court in para 4 & 5 of order on sentence dated 9th

January, 2013.

7. Learned counsel for the appellant submits that the appellant had been in custody for a period of about nine years. He has been convicted under Section 21(c) NDPS Act and sentenced to undergo RI for 15 years with fine of ₹1,50,000/- and in default of payment of fine, to undergo SI for a period of six months. The minimum sentence provided for the offence is ten years. The family circumstances of the convict have already been noted by the learned Trial Court that his wife is paralytic. The convict himself is also an old person aged about 64 years and suffering from diabetes, hypertension and various old age ailments. He is not even able to stand without support.

8. Learned counsel for the appellant further submits that during the trial of SC No.56A/09, DRI did not prove the factum of previous conviction. Certain submissions made at the stage of order on sentence on behalf of the parties in itself cannot be considered as a proof of the appellant being a previous convict so as to disentitle him to the benefit of lesser sentence.

9. Mr.Satish Aggarwala, learned counsel for DRI does not dispute that DRI has not pleaded and proved the previous conviction of the appellant before the learned Trial Court. However, he contends that during submissions on the order of sentence, on inquiry from the Court, the appellant herein did mention about his previous conviction.

10. It is necessary to prove the previous conviction of the accused in order to determine proper sentence. Even if there is no doubt that the accused was previously convicted, it could be unfair to take prior conviction into account when they were neither proved nor mentioned

in the charge. The previous conviction means the conviction of the accused for the specified offence earlier. Section 211 (7) of the Code of Criminal Procedure 1973 lays down that the specific charge of previous conviction has to be framed and put to the accused if the accused by reason of such previous conviction is liable to enhanced punishment, which is reproduced below for the sake of convenience.

“211. Contents of charge(1) Every charge under this Code shall state the offence with which the accused is charged.

.....

.....

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind for a subsequent offence, and it is intended to prove such previous conviction for the purpose of effecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted the Court may add it at any time before sentence is passed.”

11. In view of the above legal position, the submissions made on behalf of DRI that leniency on the quantum of sentence has to be denied to the convict on account of his previous conviction, is rejected.

12. Learned counsel for the appellant has submitted that the appellant is an old person aged about 64 years and not having the financial capacity to deposit the fine of ₹1,50,000/-. He is suffering

from various old age related ailments and is not even able to stand without support. The wife of the appellant is paralytic.

13. As per latest nominal roll of the appellant, in column No.14 i.e. 'Nature of labour performed by convict', it is mentioned that no labour work is allotted to the appellant being of old age.

14. Taking into consideration the submissions made on behalf of the convict and that as per the nominal roll, he has not been allotted any labour work being of old age, the substantive sentence of the appellant for committing the offence punishable under Section 21(c) NDPS Act is reduced from fifteen years to ten years.

15. Learned counsel for the appellant submits that in view of the old age of the appellant and his family circumstances, the sentence of fine and the period of sentence required to be undergone by him in default of payment of fine may be reduced.

16. The issue of reducing the sentence awarded to a convict in default of payment of fine because of his financial condition has been dealt with by the Division Bench of Madras High Court in the case of ***M. Balasubramanian Vs. State*** 2012 Cri LJ 2486. The relevant portion of report is extracted herein below:-

“27. When a person is very poor and because of his poverty he could not pay the fine amount and is ordered to remain in jail even after the period of substantive sentence of imprisonment is over, a serious prejudice would be caused to the person. This principle has been laid down by the Apex Court in MANU/SC/3895/2007 : 2007 (11) SCC 243 (Shantilal vs. State of M.P.),

28. In the words of Justice V.R. Krishna Iyer, Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.

It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of ' Daridra Narayanans' (land of poverty) is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the proviso to section 51, C.P.C and the lethal blow of Article 21 cannot strike down the provision, as now interpreted."

17. Considering the facts and circumstances of the case and the submission made on behalf of the appellant as well as the observations of the Madras High Court in **M. Balasubramanian Vs. State** (Supra), the sentence of fine of ₹1,50,000/- is reduced to ₹1,00,000/- and the period of sentence required to be undergone by the Appellant in default of payment of fine is reduced to three months.

18. Resultantly, the appeal stands allowed to the extent that while maintaining the conviction of the Appellant under Section 21(c) NDPS Act, substantive sentenced awarded to him for the said offence

is reduced from fifteen years to ten years and fine amount of ₹1,50,000/- is reduced to ₹1,00,000/- and the period of sentence required to be undergone by the appellant in default of payment of fine of Rs.1,00,000/- is reduced to three months.

19. A copy of this order be also sent to the Jail Superintendent concerned for information and compliance and be also given dasti to learned counsel for the appellant.

20. Trial Court record be sent back along with copy of this order.

CRL.M.A.942/2017 (destruction of case property)

1. This application has been filed by the respondent under Section 482 Cr.P.C. seeking permission to destroy/dispose of the case property, representative samples and foreign currency.

2. For the reasons stated in the application, the application is allowed.

PRATIBHA RANI, J.

DECEMBER 12, 2017

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