

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

Date of Decision: June 05, 2017

+ **CRL.A. 1573/2014**

VIKRAM RAJ @ VICKY & ANRAppellants

Through: Mr. Amar Nath, Amicus Curiae
counsel and Mr. Vishal Raj
Sehijpal, Advocate

versus

STATE (NCT OF DELHI) Respondent

Through: Ms. Meenkashi Chauhan,
Additional Public Prosecutor for
respondent-State with SI Ombir
Dabas

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In this appeal, appellant No.1-Vikram Raj @ Vicky S/o Sh. Tilak Raj and appellant No.2-Surjya Baro S/o Kali Ram Baro assail their conviction for the offences under Section 20 (b) (ii) (B) of *The Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as 'the NDPS Act') and Section 29 of the NDPS Act and order on sentence

vide which they have been sentenced to rigorous imprisonment for four years with fine of ₹50,000/- each with default clause for the offence under Section 20 (b) (ii) (B) of the NDPS Act and rigorous imprisonment for three years with fine of ₹25,000/- each, with default clause for the offence under Section 29 of the NDPS Act. Trial court has directed that both these sentences shall run concurrently.

At the outset, learned counsel for appellant-*Vikram Raj@Vicky* and Mr. Amar Nath, learned *Amicus Curiae* for appellant- *Surjya Baro* submit that appellants are poor persons and are not previous convicts and that they have never been involved in any case under the NDPS Act earlier. On behalf of appellant-*Vikram Raj@Vicky*, it is submitted on instructions from appellant, who is on bail and is present in the Court, that he earns his livelihood by plying Rickshaw and has got a wife and two school going children to support and he is the sole bread-earner of the family and that he has already undergone substantial sentence and has already paid the fine and so, the sentence awarded to him deserves to be reduced to the period already undergone by him.

On behalf of appellant-*Surjya Baro*, learned *Amicus Curiae* counsel submits that he is a poor person and he has already undergone substantial sentence and that in view of his poverty, the fine imposed upon him ought to be reduced to the minimum.

Learned Additional Public Prosecutor for State submits that though no minimum sentence is prescribed for the offences in question, but the sentence awarded to appellants is just and proper.

Upon hearing and on perusal of impugned judgment and the record, I find that conviction of both appellants is well merited, but the order on sentence needs to be modified in view of the facts and circumstances of this case and the Nominal Roll of both the appellants. As per the Nominal Roll of appellant-Vikram Raj @Vicky, he has already undergone sentence of one year, five months and one day.

Since six kgs of *Ganja* has been recovered from appellant-Vikram Raj @Vicky, therefore in the facts and circumstances of this case, the substantive sentence awarded to this appellant is reduced to the period already undergone by him, while the sentence of fine is maintained.

Regarding appellant-Surjya Baro, I find that as per his Nominal Roll, the unexpired sentence is of eight months and twenty three days only. In the facts and circumstances of this case, the sentence awarded to this appellant-Surjya Baro is reduced to the period already undergone by him. Since no minimum limit of fine is there, therefore the fine imposed under Section 20 (b) (ii) (B) of NDPS Act is reduced from ₹50,000/- to ₹25,000/- and under Section 29 of NDPS Act from ₹25,000/- to ₹10,000/- respectively. The period of sentence in default of payment of modified fine, is also reduced from three months to fifteen days and from forty five days to ten days respectively.

While maintaining the conviction of appellants for the offences in question, the order of sentence is modified as above. Trial court shall ensure that the modified sentence of fine is deposited, failing which appellant-Surjya Baro shall undergo the sentence in default of fine modified as above.

With aforesaid modification, this appeal is disposed of.

Trial court be apprised forthwith to ensure compliance of this judgment. Records be promptly remitted back.

(SUNIL GAUR)
JUDGE

JUNE 05, 2017

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