

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.145 OF 2019

JUDGMENT:

This appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/accused aggrieved by the Judgment, dated 12.02.2019, rendered in N.D.S.C.No.8 of 2016 on the file of Special Judge for Trial of Cases under NDPS Act-cum-I Additional Sessions Judge, Adilabad, whereby and whereunder, the learned Special Sessions Judge found the appellant/accused guilty of the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), and accordingly, he was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of six months for the said offence.

2. Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent-State. Perused the record.

3. Learned counsel for the appellant/accused would submit that the appellant/accused is an innocent person and no Ganja was seized from his possession; that for statistical purpose, this case is foisted against the appellant/accused; that the Court below ought to have disbelieved the alleged seizure of Ganja from the possession of the appellant/accused and ultimately,

prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellant/accused.

4. Learned Additional Public Prosecutor appearing for the respondent-State would contend that P.W.1 is an Investigating Officer in this case, P.W.2 is an eyewitness to the incident, and P.W.3 is also an eyewitness for confession and seizure of 500 grams of Ganja from the possession of the appellant/accused on 12.01.2016 at 0900 hours; that there is cogent and convincing evidence with regard to seizure of 500 grams of Ganja from the possession of the appellant/accused; that there is also specific allegation to substantiate the accusation against the appellant/accused for the offence punishable under Section 20 (b)(ii)(B) of the Act; that the prosecution proved the guilty of the appellant/accused beyond all reasonable doubt; that there is nothing to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the following points have come up for determination:

- “(1) Whether the police have seized 500 grams of Ganja from the possession of the appellant/accused on 12.01.2016?
- (2) Whether the prosecution proved the guilty of the appellant/accused beyond all reasonable doubt for the offence punishable under Section 20 (b)(ii) (B) of the Act?
- (3) Whether the conviction and sentence recorded against the appellant/accused for the offence punishable under Section 20(b)(ii)(B) of the Act is liable to be set aside.”

6. POINTS 1 to 3:

The specific case of the prosecution is that on 12.01.2016 the appellant/accused was found in possession of 500 grams of Ganja and the same was seized under the cover of panchanama. The sample sent to the Forensic Science Laboratory revealed that it is a Ganja.

To prove the case, the prosecution examined P.W.1-Inspector of Police, P.W.2-Independent witness, P.W.3-panch for confession-cum-seizure panchanama, PW.4- Tahsildar, P.W.5-another Investigating Officer and P.W.6- another panch for confession-cum-seizure panchanama and got marked Ex.P.1-confession-cum-seizure panchanama, Ex.P.2-FIR, Ex.P.3-CDF along with rough sketch, Ex.P.4-Notice U/sec.50 of NDPS Act, Ex.P.5-Information letter under Section 42 of NDPS Act, Ex.P.6-Details report under Section 57 of NDPS Act, Ex.P.7-Signature of P.W.3 on confession-cum-seizure panchanama, Ex.P.8-FSL report and Ex.P.9-Signature of P.W.6 on confession-cum-seizure panchanama besides M.O.1-200 grams of ganja, M.O.2-three sample packets each 100 grams and M.O.3-Motorcycle bearing No.MH-26-F-4278.

7. There is specific evidence of P.W.1, P.W.2 and P.W.5 with regard to the seizure of 500 grams of Ganja from the possession of the appellant/accused on 12.01.2016 at 0900 hours while the same was being transported by him on a Motorcycle bearing No.MH-26-F-4278. P.W.4 is an independent witness, who supported the prosecution case with regard to seizure of 500 grams of Ganja on 12.01.2016 from the possession of the

appellant/accused. P.Ws.3 and 6 did not support the case of the prosecution. But, there is evidence of P.Ws.1 and 2 and 4, who are supporting the case of the prosecution. There is no reason to discard the evidence of P.W.4. The material objects i.e., M.Os.1 to 3 placed before this Court establishes the prosecution case and the seizure of Ganja from the possession of the appellant/accused while the same was being transported by him on a Motorcycle bearing No.MH-26-F-4278. There is cogent and convincing evidence to prove the guilty of the appellant/accused for the offence punishable under Section 20 (b)(ii)(B) of the Act. There is nothing to take a different view.

8. The Court below found the appellant/accused guilty of the offence punishable under Section 20 (b)(ii)(B) of the Act and accordingly, he was convicted and sentenced to undergo rigorous imprisonment for a period of one year. The appellant/accused is a young man and said to be working as Mason. Under these circumstances, the sentence of imprisonment imposed against him can be reduced. It is evident from the record that the appellant/accused is in detention from 08.01.2016 to 04.02.2016 and from 14.11.2018 to till date. It establishes that the appellant/accused has completed nearly five (5) months imprisonment.

9. In the result, the Criminal Appeal is dismissed confirming the conviction imposed against the appellant/accused for the offence punishable under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 by Judgment,

dated 12.02.2019, in N.D.S.C.No.8 of 2016 on the file of the Special Judge For Trial of Cases under NDPS Act-cum-I Additional Sessions Judge, Adilabad, but modifying the sentence of imprisonment from one year rigorous imprisonment to the period already undergone, while maintaining the fine amount with default sentence. The other findings recorded by the Court below are confirmed. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case. The bail bonds, if any, shall stand cancelled.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

MARCH 05, 2019
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Date:05.03.2019

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