

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL NO.1351 OF 2011

ORDER:

This appeal is directed against the judgment of the learned I Additional Sessions Judge at Nizamabad in N.D.P.S. SC.No.21 of 2009 dated 25.11.2011, whereby the appellant/accused was convicted of the offence punishable under Section 8(C) read with 20(b)(ii)(B) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-, in default of payment of fine, to suffer simple imprisonment for a period of one month.

The case of the prosecution is that on 05.08.2009 at about 8 a.m., on the instructions from the higher officers, P.W.1 along with constables, V.Ravi Kumar (L.W.2) and M.A.Wahad (L.W.3) started vehicle check at Railway Station 'x' roads, Nizamabad and at about 10 a.m., they found a person, that on seeking the police, he started running towards Armoor road with a plastic bag and on suspicion, they chased and apprehended the said person. On search of the plastic bag, they found 5 kgs of ganja, on interrogation, he disclosed his name as Mirza Iqbal Baig (accused) and that he purchased ganja from an unknown person at Dichpally area to sell in retail at Railway Station by preparing small sachets to gain profits and subsequently, the A.S.I. along with other constables produced the accused before the Police Station with ganja by lodging a complaint under Ex.P1.

The plea of the accused is one of total denial. The prosecution, in order to prove its case against the accused, examined P.Ws.1 to 5 and got marked Exs.P1 to P5 and M.Os.1

and 2. The learned I Additional Sessions Judge at Nizamabad, on appraisal of the entire evidence, both oral and documentary, held that the prosecution has proved its case against the accused for the offence under Section 8(C) read with 20(b)(II)(B) of the NDPS Act and accordingly, convicted and sentenced him as stated supra. Aggrieved by the said conviction and sentence, the appellant/accused preferred the present appeal.

Learned counsel for the appellant/accused submitted that the Court below failed to observe that the witness has admitted that the panchanama was drafted by the Sub Inspector of Police. He further submitted that the Court below failed to consider that P.W.3, who conducted panchanama, admitted in cross examination that at the time of seizure the contraband was properly affixed the panch chits but when confronted in the witness box, the sample was not in tact. It is further submitted that the Court below failed to consider that the ganja was weighed but the weighing of the ganja was not reflected in the panchanama. It is further submitted that the Court below failed to consider the inconsistency regarding the time of detection of the offence, which shows that the accused was not involved by planting ganja and failed to observe that no ganja was recovered from the accused. It is further submitted that the Court below failed to consider that no local witness was examined and no local panch was obtained and all the witnesses to the case are official witnesses. It is further submitted that the Court below ought to have not considered the evidence of P.Ws.2 and 5, who are subordinates to P.W.3, who is Tahsildar and who has conducted panchanama and all the above witnesses are revenue officials and their evidence cannot be looked

into to prove the seizure of ganja from the possession of the accused. It is further submitted that P.W.2 is a stock witness and he has admitted the same in his cross examination and he attends ten panchanamas daily and therefore, the evidence of P.W.2 cannot be looked into and that P.W.3, MRO has considered that the ganja was not sealed.

On the other hand, the learned Additional Public Prosecutor appearing for the respondent/complainant submitted that there is sufficient material to show that the appellant-accused was accountable for commission of the offence and, therefore, the conviction and sentence passed by the Court below is justified and no interference is called for from this Court.

I have heard the learned counsel for the appellant/accused as well as the learned Additional Public Prosecutor appearing for the respondent/complainant and gone through the oral and documentary evidence of the prosecution witnesses and found that the Court below was right in convicting the appellant/accused. The Court below has given sufficient and cogent reasons for passing conviction against the appellant/accused. Learned counsel for the appellant/accused has also not shown anything on record which would discredit the evidence. Therefore, there is no interference warranted as far as conviction is concerned, but with regard to the sentence, it may be mentioned that the offence took place on 05.08.2009 and almost ten years have passed and during this period, the appellant/accused, who is aged about 60 years, must have repented for what he did and that he had also undergone imprisonment for a period of 30 days during investigation, trial and after conviction.

In the aforesaid circumstances and in order to meet the ends of justice, it would suffice to reduce the sentence of rigorous imprisonment of one year to that of rigorous imprisonment of three months, while enhancing the fine amount from Rs.2,000/- to Rs.10,000/- (Rupees ten thousand only), and in default of payment of fine, the appellant/accused is further directed to undergo simple imprisonment for a further period of one month.

With the above modification, the Criminal Appeal is partly allowed and the sentence of rigorous imprisonment of one year, imposed by the Court below in N.D.P.S. SC.No.21 of 2009 on the file of the I Additional Session Judge at Nizamabad, dated 25.11.2011, is reduced to three (3) months while enhancing the fine amount from Rs.2,000/- to Rs.10,000/- (Rupees ten thousand only), in default of payment of fine, the appellant/accused is further directed to undergo simple imprisonment for a further period of one month. The remand period already undergone by the appellant/accused shall be given set off under Section 428 of the Code of Criminal Procedure.

Miscellaneous applications, if any, pending shall stand closed.

(G. SRI DEVI, J)

12th December 2019
RRB