

HONOURABLE JUSTICE G.SRI DEVI

CRL.A.No.613 of 2011

JUDGMENT:

This appeal is directed against the judgment of the learned I-Additional Sessions Judge, Medak at Sangareddy, in N.D.P.S. S.C.No.19 of 2011 dated 23.05.2011, whereby the appellant/accused was convicted of the offence punishable under Section 8 (c) read with Section 20 (b) of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.20,000/-, in default of payment of fine, to suffer simple imprisonment for a period of four months.

The case of the prosecution is that on 07.10.2010 at about 11.30 A.M. P.Ws.3, 4 and 5/Prohibition and Excise officials along with P.Ws.1 and 2/Panch witnesses raided the house of the appellant/accused after serving a search memo and a notice under Section 50 (1) of the N.D.P.S. Act and found 6.500 K.Gs. of dry Ganja in a plastic cover and also 30 paper packets each containing about 20 grams of Ganja concealed with bed sheets in the north-eastern corner of the second room of the house and that the accused confessed that he purchased the same from an unknown person of Munipally village at the rate of Rs.500/- per K.G. and was selling the same to the needy persons. Thereafter, a case in COR No.253 of 2010-2011 was registered against the accused for the offence under Section 8 (c) read with Section 20(b) of the N.D.P.S. Act. After

completion of investigation, charge sheet has been filed against the accused under the aforesaid offences.

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 P21 and M.Os.1 and 2. The learned Additional Sessions Judge, on appraisal of 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 Section 20 (b) of N.D.P.S. 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 ought not to have believed the evidence of P.Ws.3 to 5 to the effect that they have given the information to the higher officials before proceeding to the house of the appellant/accused because the same was not reflected in the panchanama and seizure conducted at the spot. He further submitted that the Court below ought to have noted that no evidence had been let in to show that the seals of the samples taken were intact and the property seized is kept in safe custody till it was handed over in the Court and examined by the F.S.L. He further submitted that the Court below ought to have noted that as per Section 50 of the N.D.P.S. Act, the search on the person should be conducted by a Gazetted Officer and no steps were taken to produce the accused before the Gazetted Officer and, therefore, non-compliance of the provisions of Section

50 of the N.D.P.S. Act causes great prejudice to the accused. He further submitted that there are material contradictions and omissions in the evidence of prosecution witnesses and on this ground alone, the prosecution version ought to have been rejected.

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 the commission of 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 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 the 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 07.10.2010 and almost 9 years have passed and during this period, the appellant/accused, who is aged 66 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 the period already undergone by the appellant/accused, while maintaining the sentence of fine amount.

With the above modification, the appeal is partly allowed and the sentence of rigorous imprisonment of one year, imposed by the Court below in N.D.P.S. S.C.No.19 of 2011 dated 23.05.2011, is reduced to that of the period already undergone by the appellant/accused, while maintaining the sentence of fine of Rs.20,000/-.

JUSTICE G.SRI DEVI

09-12-2019
Gsn.

