



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254

CRA-S-3794-2019

Date of Decision : **October 15, 2024**

STATE OF HARYANA

.....Appellant

VERSUS

RAM PARSAD AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Abhinash Jain, DAG, Haryana.

Mr. Parveen Sharma, Advocate for the respondents.

KULDEEP TIWARI, J. (Oral)

1. Through the instant appeal preferred under Section 377(3) Cr.P.C. seeking enhancement of the sentence, as imposed by the learned trial Court concerned after finding the respondents-accused guilty for the commission of offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 in case FIR No. 314 dated 29.11.2015, registered at Police Station Bawani Khera.

2. In the instant case, the charges were framed against the respondents-accused under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act of 1985**') and vide judgment dated 29.5.2018, both the respondents-accused were convicted for the charges framed against them and vide separate order of that date, the learned trial Court concerned after considering all the circumstances that includes the quantity of the contraband, the antecedents of

the respondents-accused and their financial status, directed them to the sentence, for the period of imprisonment already undergone by them and to further pay a fine of Rs.10,000/- each.

3. The learned State counsel submits that infact the recovery effected from the respondents-accused is of 1 kg of *charas*, which falls within the ambit of commercial quantity, therefore, in view of the provisions of Section 20(C) of the Act of 1985, the punishment which is prescribed is rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and further the convict is liable to pay fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. He further submits that the learned trial Court concerned has unnecessarily given weightage to the antecedents of the respondents-accused, whereas, since huge recovery of contraband has been effected from them, they should be punished accordingly.

4. Before this Court delve into the submissions made by the learned State counsel, it is prudent to have a brief survey of the present matter.

5. In the instant case, both the respondents-accused were arrested on dated 29.11.2015, while riding on a motorcycle on the basis of suspicion. They were searched in accordance with the rules in the presence of a Gazetted Officer i.e. DSP Abhimanyu. During search, 560 grams of Charas/Sulfa was recovered from respondent-Suresh and 440 grams of Charas/Sulfa was recovered from respondent-Ram Parsad. Both the respondents-accused and the case property were produced before the Station House Officer concerned. The representative samples of the case property were separated and were converted into sealed parcels. The samples were sent to FSL, Madhuban for

examination. The recovered contraband was found to be of Charas/Sulfa. After completion of investigation, the final report was filed and both the respondents-accused were sent to face trial for the offence punishable under Section 20 of the Act of 1985. The learned trial Court concerned after making due compliance of the provisions of Section 207 of Cr.P.C., proceeded to frame charges against the respondents-accused under Section 20 of the Act of 1985.

6. The prosecution in order to prove the allegations against the respondents-accused, examined as many as eight witnesses, whereas, the respondents-accused opted not to lead any evidence in their defence.

7. The learned trial Court concerned found that the prosecution has succeeded in their attempt to bring home the guilt of the respondents-accused and convicted them for the charges framed against them vide judgment dated 29.5.2018 and vide order of even date, sentenced them, as mentioned above.

8. The quantum of sentence caused grievance to the State and propelled them to file the instant appeal under Section 377(3) Cr.P.C. on the ground of inadequacy of sentence imposed upon the respondents-accused.

9. With the able assistance of the learned counsel for the parties concerned, this Court has examined the submissions and has gone through the entire record finds that there is no merit in the instant appeal, as preferred by the State. The first contention, as raised by the learned State counsel is that since 1 kg Charas has been recovered from both the respondents-accused, therefore, the recovered quantity falls within the ambit of commercial quantity and the learned trial Court concerned after convicting the respondents-accused under Section 20 of the Act of 1985 cannot impose the sentence less

than 10 years. In this regard, he draws the attention of this Court towards Section 20(C) of the Act of 1985, which is reproduced hereinafter:-

“(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

10. It is not in dispute that the exact total quantity, which was recovered from both the respondents-accused comes out to be 1 kg of Charas/Sulfa. Section 2(viia) of the Act of 1985 defines ‘commercial quantity’, which reads as under:-

“2 (viia) “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;”

11. A perusal of the above statutory provisions clearly indicates that the case of the respondents-accused falls under Section 20(b)(ii)(B) of the NDPS Act, which provides the punishment of rigorous imprisonment for a term which may extend to 10 years. Since the recovered quantity is 1 kg of Charas/Sulfa, which is not greater than the quantity specified by the Central Government vide notification dated 19.10.2001, therefore, the recovered quantity does not fall within the ambit of commercial quantity and the submission made by the learned State counsel is liable to be rejected.

12. So far as the quantum of sentence is concerned, this Court is of the view that the same is also not required to be interfered with. It is not in

dispute that both the respondents-accused have clean antecedents and infact they are the first time offenders. The learned trial Court concerned after considering all the relevant and mitigating circumstances, had sentenced the respondents-accused for the period already undergone by them and adequately imposed the fine upon. It is trite law that when a minimum or maximum term is prescribed by the Statute with regard to the period of sentence, the discretionary element is vested with the learned trial Court concerned and the learned trial Court concerned is under statutory obligation to consider all the backgrounds, the gravity of the offence and the impact of the offence upon the society while determining the quantum of sentence and this discretion is not to be exercised arbitrarily or whimsically. This Court finds strength to the above view from the ratio of law laid down by the Hon'ble Supreme Court in "**Deo Narain Mandal Vs. State of UP**" (2004) 7 SCC 257.

13. In the touchstone of the above law, as laid down by the Hon'ble Supreme Court, this Court do not find any perversity or illegality in the order of sentence, therefore, the instant appeal is ordered to be **dismissed**.

October 15, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No