

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.828 OF 2008

RADHEY SHYAM

APPELLANT

VERSUS

UNION OF INDIA

RESPONDENT

O R D E R

1. Being aggrieved by the judgment and order passed by the High Court of Judicature of Madhya Pradesh in Criminal Appeal No. 369 of 2003, dated 05.12.2006, the appellant is before us in this appeal. By the impugned judgment and order, the High Court has confirmed the judgment and order passed by the learned Special Judge (under the Narcotic, Drugs and Psychotropic Substances Act, 1985) in Sessions Trial No.76/2002, dated 31.01.2003.

2. The appellant-accused is alleged to have sold 10 bags of poppy husk (total quantity of about 162 Kg.) for Rs.1500/- to other two co-accused Bhuma and Rama, who were found in possession of the said poppy

husk. The only evidence that was led by the Prosecution, insofar as the appellant is concerned, is the statement made by the appellant under Section 67 of the Narcotic, Drugs and Psychotropic Substances Act, 1985 (hereinafter, for the sake brevity, referred to as "the NDPS Act"). Based on the aforesaid statement so made, the learned Sessions Judge has convicted and sentenced the appellant to rigorous imprisonment for a period of 10 years with fine of Rs.1 lac under Section 8 read with Section 15(c) of the NDPS Act.

3. It is the aforesaid order which was questioned by the appellant before the High Court in Criminal Appeal No. 369 of 2003. As we have already noticed, the High Court has confirmed the orders passed by the learned Sessions Judge.

4. Shri Ranbir Singh Kundu, learned counsel appearing for the appellant, would contend that the learned Sessions Judge ought not to have placed total reliance on the statement of the accused made under Section 67 of the NDPS Act ("the statement"

for short) and have convicted and sentenced the appellant for the offence under Section 8 read with Section 15(c) of the NDPS Act. Exhibit P-19, the statement supposed to have been made by the accused, was produced and marked in the evidence of the Investigating Officer. According to the learned counsel, the document is a fabricated document and, therefore, the learned Sessions Judge ought not have placed reliance on the said document while convicting the appellant for the aforesaid offence.

5. In support of his contention, the learned counsel has taken us through the evidence of the Investigating Officer, in particular, his cross-examination. We have carefully perused the statement recorded when the Investigating Officer was in the witness box. The suggestion of the learned counsel for the defence that all proceedings at the appellant's house were counter signed by two witnesses was accepted by the Investigating Officer. He would go to the extent of saying that the proceedings which were conducted at the house of the appellant and the statement of the appellant were

counter signed by the two witnesses, namely, Radhey Shyam and Govind. A further suggestion was made to the Investigating Officer that since Exhibit P-19 does not bear the signatures of the two witnesses, the said document is a forged document for which there is denial by the Investigating Authority.

6. Shri P.K.Dey, learned counsel appearing for the Union of India, would submit that the statement does not require to be counter signed by witnesses and, therefore, the learned Sessions Judge was justified in relying upon the statement made by the appellant under Section 67 of the NDPS Act and thereby convicting and sentencing the appellant for the offence stated earlier.

7. Having considered the submissions made by learned counsel for the parties to the *lis*, we are of the opinion that in the present case, the question that whether the statement requires to be signed by two witnesses or not does not need any discussion. What requires our consideration in this case is whether the reliance placed by the learned

Sessions Judge on the statement, Exhibit P-19, justified or not. For that purpose the evidence of the Investigating Officer, who had categorically stated that the entire proceeding was recorded in the house of the appellant, needs to be evaluated. In the said evidence, he further states that when the proceedings were conducted, two witnesses were present and the statement of the appellant was recorded in their presence and they had counter signed the same.

8. In order to verify the correctness or otherwise of the said document, we have looked into the Original Records. The said document does not bear the signatures of the two witnesses. This generates a doubt in the mind of this Court that the document so produced and marked in the evidence may not be the original statement of the appellant, recorded under Section 67 of the NDPS Act.

9. In view of the above, in our opinion, some doubt would arise with regard to the complicity of the appellant for the offence under Section 8 read

with Section 15 (c) of the NDPS Act. We are, therefore, of the opinion that the benefit of doubt requires to be given to the appellant. Accordingly, we allow this appeal, set aside the conviction and sentence awarded by the Trial Court and confirmed by the High Court, by giving the benefit of doubt to the appellant.

10. We further direct that the appellant be released forthwith, if not required in any other case and any fine amount deposited by the appellant-accused shall be returned forthwith to the appellant. Since the appellant is on bail, his bail bonds are discharged.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
SEPTEMBER 26, 2012