

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 972 OF 2003

The Superintendent, Narcotic
Control Bureau

....Appellant

Versus

Parash Singh

....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Calcutta High Court quashing charges framed under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the ‘NDPS Act’) as amended by Act 9 of 2001. The High Court directed the trial court to frame charges under Section 20(b) (i) of the Act.

2. The background facts in a nutshell are as follows:

A complaint was filed under Section 8 of the Act alleging commission of offence punishable under Section 20(b)(i) of the Act on 21.9.2001. The un-amended provision reads as follows:

"20. Punishment for contravention in relation to Cannabis plant and Cannabis-----"

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:

(b) Produces, manufactures, possesses, sells, purchases, transports, imports inter-state, exports inter-state or uses cannabis, shall be punishable-----

(i) Where such contravention relates to Ganja or the cultivation of Cannabis Plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees....."

The NDPS Amendment Act, 2001 (hereinafter referred to as the 'Amendment Act') introduce certain changes. Charges were framed in the instant case under Section 20(b)(ii)(c) of the Act (as amended on 16.1.2002). The amended provision read as follows:

"20. Punishment for contravention in relation to cannabis plant and cannabis-Whoever, in contravention, of any provisions of this Act or any rule or order made or condition of licence granted thereunder:

(b) Produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-

(ii) Where such contravention relates to sub-clause (b)-

(a) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(b) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(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."

The High Court was of the view that a new offence was made out because a higher punishment was imposed. Stand of the appellant is that no new offence was created but what was provided for related to more stringent

sentence. It is, therefore, submitted that the High Court was not justified in holding that the new offence was committed.

3. Learned counsel for the respondent supported the judgment of the High Court.

4. In order to appreciate the stand of the learned counsel for the appellant a reference to Article 20 of the Constitution of India, 1950 (in short the 'Constitution') reads as follows:

Protection in respect of conviction for offences.

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

5. It is manifest from Article 20(1) that it prohibits (1) making an Act for the first time and then making that law retrospective. In other words it is not permissible to create an offence retrospectively (2) the infraction of the

penalty may not be higher than what is prescribed in law which was in force at the time of the commission of the offence. It needs to be noted that the validity of Amendment Act was challenged before this Court in Basheer @ N.P. Basheer v. State of Kerala [2004(3) SCC 609]. The validity of the act was upheld. This Court held that (a) all cases pending before the Court on 2.10.2001; (b) all cases under investigation as on that date shall be disposed of in accordance with the provisions of the Act as amended by the Amending Act. In State through CBI Delhi v. Gian Singh [1999(9) SCC 312] it was held with reference to Article 20(1) of the Constitution that it is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribes and no ex-post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation down grades the harshness of the sentence for the same offence, it would be salutary principal for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence. The view expressed in Gyan Singh's case (supra) finds support from the case of T. Barai v. Henry Ah Hoe & Anr. [1983 (1) SCR 905]. The High Court was not justified in holding that new offence was created. Before the amendment as well as after the amendment the ingredients of Section 8

remain same and there was no amendment in this provision. Only punishment for contravention in relation to cannabis plant and cannabis i.e. Section 20 of the Act has been amended by the Amendment Act.

6. The appeal is, therefore, dismissed with clarification that no new offence was created by the Amendment Act. But at the same time no punishment higher than what was originally provided for can be imposed on the accused.

7. The appeal is dismissed with the aforesaid clarification.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi
October 15, 2008