

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 378 OF 2021
[Arising out of S.L.P. (CrI.) No. 1987/2021]

M. SAMPAT

.....APPELLANT

VERSUS

THE STATE OF CHHATISGARH

.....RESPONDENT

J U D G M E N T

Leave granted.

This appeal is against a judgment and order dated 26-03-2018 passed by the High Court of Chhattisgarh at Bilaspur in CRA No.113 of 2012 upholding the conviction of the Appellant under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

It was the case of the Prosecution that on 14-09-2009, the Police received secret information that certain persons were transporting 'Ganja' in a Maruti Omni Van and a Truck. Three persons were apprehended from the Maruti Omni Van for transporting 26 kgs of 'Ganja'. These three persons in the Maruti Van were later acquitted.

After searching the Maruti Omni Van and apprehending these persons, a truck bearing Number 38 L 999 of which the Appellant had been an employee, was intercepted. The Driver of the Truck,

T. Narsaiya (since deceased) tried to escape, but was apprehended and the said truck was searched.

In course of the search, 3327 kgs of 'Ganja' was found concealed in the said truck, with Onion bags. The driver T. Narsaiya, since deceased and the Appellant were taken into custody and criminal proceedings initiated against them under the NDPS Act.

By a judgment and order dated 14.12.2011, the Special Judge, NDPS Act, Bastar at Jagdalpur found the Appellant and the said Narsaiya (since deceased) guilty under Section 20(b)(ii)(C) of the NDPS Act and sentenced them to maximum punishment of 20 years of rigorous imprisonment and fine of Rs.2 lacs. Both Narsaiya (since deceased) and the Appellant appealed to the High Court. While the appeal in the High Court was pending, Narsaiya died.

By the impugned judgment and order dated 26-3-2018, the High Court affirmed the conviction of the Appellant but modified the sentence to 15 years rigorous imprisonment instead of 20 years, and reduced the fine to Rs.1 lac from Rs.2 lacs. Aggrieved by the judgment and order impugned, the Appellant has approached this Court. The Appellant has preferred a jail petition and Ms. Priyanjali Singh, learned counsel has been appointed as an Amicus Curiae on his behalf.

The Prosecution has successfully established that over 3,300 kgs of 'Ganja' that is cannabis, a narcotic drug was illegally being transported in the aforesaid truck bearing Number 38 L 999.

The Appellant was in the vehicle when the said vehicle was intercepted by the police.

Ms. Priyanjali Singh strenuously argued that the Appellant, who was not the owner of the truck, but only a poor conductor, 22/23 years of age at the time of the incident, could not possibly have committed the offence alleged. He was not even aware of the fact that 'Ganja' was being carried in the truck in question.

Under Section 20(b) whoever produces, manufactures, possesses, sells, purchases or even transports cannabis (including 'Ganja') is punishable with imprisonment for a term which may not be less than ten years, but might extend to twenty years, and fine in addition to imprisonment, which shall not be less than one lakh but might extend to two lakh rupees.

Having regard to the huge quantity (3332 kgs.) of 'Ganja' (cannabis) carried on the truck, it is difficult to accept Ms. Priyanjali Singh's argument that the Appellant, an employee of the truck, described as a conductor, but actually a helper, was not even aware of the fact that 'Ganja' was being carried in the truck. The truck was almost full of 'Ganja' camouflaged with only a few bags of onions at the top.

After going through the impugned judgment and order of the High Court, the judgment and order of the Trial Court and after hearing Ms. Priyanjali Singh, learned Amicus Curiae, and Dr. Rakesh Pandey, learned counsel appearing on behalf of the State of

Chhattisgarh, we do not find any cogent ground to interfere with the concurrent findings of the High Court and the Trial Court convicting the Appellant of offence under Section 20(b)(ii)(C) of the NDPS Act.

The Trial Court imposed maximum punishment of rigorous imprisonment for twenty years and fine of Rs.2 lakhs for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act. In default of payment of fine each of the accused were to undergo additional rigorous imprisonment for three years.

However, the order of sentence passed by the Trial Court did not disclose the reasons for awarding the maximum punishment to the Appellant. Although the Trial Court has recorded that the accused and their counsel were heard on the question of sentence, there is no whisper of the arguments advanced. It appears that the enormity of the quantity of 'Ganja' seized from the lorry, swayed the Trial Court to impose the maximum punishment. The Trial Court neither considered the extent of involvement of the Appellant nor considered if there were any extenuating circumstances for imposing a lesser punishment.

The High Court allowed the appeal of the Appellant in part. While maintaining the conviction, the substantive jail sentence was reduced to 15 years from 20 and the amount of fine reduced to Rs.1 lakh from Rs.2 lakhs. While the High Court has rightly reduced the sentence, the order of the High Court does not indicate the reasons why a sentence of imprisonment higher than the minimum was thought

necessary. The Appellant who was only an indigent helper (described as conductor) on the truck, 22/23 years of age, did not make any attempt to abscond, unlike the driver Narsaiya. He did not show any suspicious behaviour.

The owner of the truck is absconding. The driver T. Narsaiya had made an attempt to flee. There is nothing against the Appellant except that he was in the truck containing the contraband narcotic drugs, of which he was helper, and some documents pertaining to the truck were found from him.

As pointed out by Ms. Priyanjali Singh, learned Amicus Curiae, the very fact that the Appellant remained in jail and has filed a jail petition shows the poor financial condition of the Appellant. As an impecunious helper earning a meager salary, the Appellant could not possibly have had any say with regard to the articles loaded in the truck. There is no definite evidence to establish that the Appellant knowingly committed the offence. However presumption, having regard to the surrounding circumstances has resulted in his conviction. Even assuming, he realized that "Ganja" was being loaded, he could perhaps do little but to remain a mute spectator to the commission of the offence, as otherwise, he would have risked his job, his only means of survival, if not his life.

Ms. Priyanjali Singh submits that the Appellant is a first time offender. As argued by her, the Appellant is not the owner of the vehicle. The owner is, as Dr. Rakesh Pandey, learned counsel

for the State of Chhattisgarh has pointed out, absconding. The driver of the vehicle, who had been convicted, has died in the meanwhile.

Considering the facts and circumstances of the case, particularly the fact that the Appellant, an indigent helper on a truck, only 22/23 years of age at the time of incident and a first time offender, and considering that nothing was recovered from his custody except for documents pertaining to the vehicle, of which he was a helper (described as conductor), we deem it appropriate to reduce the sentence of imprisonment to the period already undergone, which in any case, far exceeds the minimum sentence of imprisonment of 10 years.

The appeal is partly allowed and the order of the High Court is modified to the extent indicated above.

The Appellant shall be set free.

Pending application(s) if any, stand disposed of.

..... J.
[INDIRA BANERJEE]

..... J.
[KRISHNA MURARI]

NEW DELHI
APRIL 05, 2021