Jagdish Budhroji Purohit

Vs

State of Maharashtra

Criminal Appeal No. 1764 of 1996

(G. T. Nanavati, S. P. Kurdukar JJ)

01.09.1998

JUDGMENT

NANAVATI, J.

1. The appellant has been convicted under Sections 20(b)(ii) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by the Court of the Special Judge, Thane in Sessions Case No. 633 of 1990. The trial court sentences him to suffer rigorous imprisonment for 12 years and to pay a fine of rupees two lakhs. The appellant challenged his conviction and sentence by preferring Criminal Appeal No. 643 of 1995 to the High Court of Bombay. The High Court confirmed the conviction and also the order of sentence. It dismissed the appeal. Aggrieved by the judgment and order passed by the High Court, the appellant has filed this appeal.

2. What has been found against the appellant is that he was manufacturing mandrax tablets in his factory. When the officers of the Narcotics Control Bureau raided his factory on 23-8-1990 methaqualone powder weighing 492 kg, mandrax tablets weighing 22.500 gm and 1.450 kg hashish were found from the factory. Before the trial court and also before the High Court, the contentions of the appellant were that the Chemical Examiner's reports, Exhibits 61 to 67, were not admissible in evidence as they did not contain any data regarding analysis, the panchnamas were also not admissible as the notes on the basis of which they were prepared were not produced before the Court and that the brother of the appellant who was present throughout the raid was not examined as a witness. The courts did not find any substance in these contentions.

3. The learned counsel for the appellant has again challenged before us the finding regarding admissibility of reports, Exhibits 61 to 67, and in the alternative, submitted that no weight should be attached to them as they do not contain any data regarding the test applied by the Chemical Examiner for finding out the contents of the samples examined by him. The reports, Exhibits 61 to 67, do show that a qualitative test was followed by the Chemical Analyser. As a result of that test, he found methaqualone in the samples examined by him. Moreover, in this case the prosecution had led evidence of PW 1, Vijay Kumar Shahasane and PW 3, Sidram Dhange, members of the raiding party, to prove that the powder which was found from the factory was methaqualone and that the tablets which were found from the factory were methaqualone tablets. Both of them have stated that they have received sufficient training and thus have sufficient knowledge about narcotic substances and the methods of testing them. They had carried with them a kit for the purpose of testing when they had raided the factory. On analysis by them, the powder was found to be methaqualone and the tablets were found containing methaqualone. Therefore, even if Exhibits 61 to 67 are ignored, there is sufficient evidence on record to show that methaqualone powder and tablets were found from the appellant's factory. Thus the appellant's conviction under Section 22 of the NDPS Act is quite

proper. Both the witnesses have further stated that on analysis, the green substance which was found from one of the cabins was hashish. Therefore, conviction of the appellant under Section 20(b)(ii) of the NDPS Act is also quite proper.

4. It was next contended by the learned counsel that the substance which was seized from the factory and sent by PWs 1 and 3 to the laboratory was of white colour but in the reports of the Chemical Examiner, it is stated that the colour of the samples examined by him was grey. The evidence establishes that the samples were received by the Chemical Examiner in a sealed condition and they were intact. The samples were in a fit condition for testing. That leaves no doubt about the material seized from the factory and examined by the Chemical Examiner being the same.

5. It was next submitted that no evidence was led to prove that the appellant was in exclusive possession of the factory and in the absence of such evidence, his conviction must be regarded as illegal. We find no substance in this contention also because PW 1 has clearly stated in his evidence that when he raided the factory, it was locked. He has further stated that he had inquired about the appellant at his place of residence but he was not found. The son of the appellant had informed PW 1 that he was not knowing the whereabouts of his father. PW 1 then contacted the appellant's brother but he was not able to say where the appellant was. The appellant had absconded and was found from Pune after about 2 months. In his statement under Section 313 CrPC, he had not stated that he had not closed the factory or that he was not present at that time or that the key of the factory had remained with someone else. The factory belonged to the appellant. He was the sole proprietor. In view of these facts and circumstances, it was necessary for the appellant to explain how the offending articles came to be found from his factory. He did not offer any plausible explanation. Therefore, the finding recorded by the trial court and confirmed by the High Court that the offending articles were found from the possession of the appellant appears to be quite justified.

6. It was lastly urged that the appellant is an old man, therefore, some leniency should be shown to him by reducing the substantive sentence to the period already undergone. A huge quantity of psychotropic substances was found from the possession of the appellant. A person who indulges in an activity of this type does not deserve leniency.

7. This appeal is, therefore, dismissed.