

Raju

Vs

State of Kerala

Criminal Appeal No. 798 of 1996

(G. T. Nanavati, S. N. Phukan JJ)

05.05.1999

JUDGMENT

G.T. Nanavati, J.

1. The appellant has been convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 1 lakh. His conviction by the trial court has been confirmed by the High Court. He has, therefore, filed this appeal.
2. The facts as found by the trial court are that on 27.12.1989, the appellant was found in possession of 100 mgs. of brown sugar. It was at about 1.25 p.m. when he was passing on a road. Though it is not very clear as to what exactly was the explanation given by him to them, it appears from cross-examination of the witnesses and the statement recorded under Section 313 Cr.P.C. that he had purchased the said quantity from one Mattancherry Rafeeqe for a sum of Rs. 25/- for his personal consumption. Though the quantity found was 'small quantity', the Trial Court refused to give benefit of Section 27 of the Act to the appellant on the ground that he had failed to establish that it was for his personal consumption. The Trial Court proceeded on the basis that the appellant possessed the same for sale and convicted him under Section 21 of the Act. The High Court also adopted the same line of reasoning and confirmed the finding recorded by the Trial Court.
3. What is contended by the learned counsel for the appellant is that the courts below have not properly considered the defence raised by the appellant. He submitted that even though he had raised the plea that the quantity of 100 mgs. was 'small quantity' and it was kept for his personal consumption, the trial court rejected the said plea on the ground that no evidence was led by the appellant to prove his defence and that if the appellant was an addict to brown sugar, one would have found withdrawal symptoms in him but no such tendencies were exhibited by the appellant at any stage of trial.
4. The prosecution had led no evidence to show that he was an addict or that he was regularly taking brown sugar. Therefore, it was not proper to reject the defence of the appellant on the ground that during the trial the appellant was in custody and could not have consumed brown sugar and yet he did not exhibit withdrawal symptoms. It is also not in dispute that the quantity which he was carrying was 'small quantity'. The value of it was only Rs. 25/-. It is, therefore, doubtful if such a small quantity was purchased by him for sale and make any profit out of it. In any case, there is no evidence on the basis of which such an inference can be drawn. These aspects have not been considered by the trial court and the High Court. We are of the opinion that this appeal deserves to be allowed and the conviction of the appellant deserves to be altered from Section 21 to Section 27

of the NDPS Act.

5. We accordingly allow this appeal and alter the conviction of the appellant from under Section 21 to one under Section 27 of the NDPS Act and also alter the sentence of 10 years rigorous imprisonment and a fine of Rs. 1 lakh to rigorous imprisonment for one year and a fine of Rs. 5,000/-. In default of fine, the appellant shall suffer further imprisonment for a period of three months.

6. The appeal is allowed accordingly.

Appeal allowed.