

SUPREME COURT OF INDIA

T. Thomson

Vs.

State of Kerala

(K.T. Thomas and R.P. Sethi JJ.)

30.08.2000

ORDER

1. The above three appeals arise from one judgment in which three persons stand convicted ultimately for offences under Narcotic Drugs and Psychotropic Substances Act (for short "the Act") 1985. We will refer to them by the rank in which they were referred in the trial court. A.1 - T.Thomson was convicted Under Sections 21 and 25 of the Act and was sentenced to undergo rigorous imprisonment for a period of 20 years each under the above counts besides a fine of Rs. 2 lakhs each under both counts. A.2 -Bhuvanachandran Nair and A.3 - Madhusoodhan Achari were convicted Under Section 21 alone, but sentenced to imprisonment for a period of 20 years and to pay a fine of Rs. 2 lakhs each. There was a fourth person arrayed in the trial court by name Jay Kumar. Though he was convicted under the same Section and was convicted with the same sentence he got acquittal from the High Court. So the three convicted persons have filed these appeals by special leave.

2. PW.1, S.Madanan (the Superintendent of Central Excise, Customs and Intelligence Unit, Trivandrum) conducted a raid on 27, December 1993 in the building which is said to be the residence of first accused - T. Thomson. The raiding party recovered brown sugar kept in a polythene bag. It weighed 506 grams. The three appellants were present in the house then. They were arrested by the raiding party.

3. The evidence mainly rests on the statements recorded from the three appellants separately Under Section 67 of the Act. Ext. P2 is a statement attributed to the first accused, Ext. P3 is attributed to the second accused while Ext. P4 is said to have been given by the third accused.

4. Though arguments have been addressed by Shri. U.R. Lalit, learned Senior Counsel who is appearing for the second accused regarding the voluntary nature of the statement, we are not persuaded to find anything which would effect the voluntariness of those statements. learned Counsel argued that it was the duty of the prosecution to give evidence in support of the voluntary nature of the statement. The court, before which the statement was tendered has considered the evidence after cross-examination of the witnesses responsible for the same and reached the conclusion that the statements were made voluntarily. We are not told of any special reason to take a different view.

5. Learned senior Counsel further argued that the record alleged to have been prepared by PW. 1 on getting information regarding the movement of the appellants has not been produced in court. But

he conceded that no motion was made on behalf of the appellants to call for the said record. There is no statutory requirement that such a record should be produced in the court as a matter of course. We are, therefore, not disposed to upset the finding on that score either.

6. Sri Sadrul Anam, learned Counsel who argued for the first accused contended that there was no written authorisation for PW. 1 to conduct a search in the house and therefore, the search must be held without authority. Section 41(2) requires such authorisation only if the officer of gazetted rank (specified in the Sub-section) wants any other officer subordinate to him to conduct the search. If the Gazetted Officer himself is to conduct the search or raid it is unnecessary for him to get any other authorisation from another Gazetted Officer.

7. For the aforesaid reasons, we are not inclined to disturb the finding on facts nor the conviction imposed on the appellants. However, learned Counsel appearing for the appellants made a plea for reducing the sentence to the minimum period prescribed for the offence. The reason advanced by the Counsel in support of the aforesaid plea is mainly that the narcotic drug (brown sugar) was only 506 grams and such a quantity does not warrant a sentence of such a harsh dimension. In the peculiar circumstances of these cases, we are also of the view that the sentence can be limited to the minimum period prescribed under the provisions. We, therefore, reduce the sentence to RI for 10 years and a fine of Rs. 1 lakh Under Section 21 of the Act for all the appellants. Regarding the offence Under Section 25 in respect of the first accused - Thomson also, we reduce it to rigorous imprisonment for 10 years and a fine of Rupees 1 lakh. We direct the sentences for the aforesaid two counts to run concurrently as for the first accused.

8. In default of payment of fine the appellants shall undergo imprisonment for a further period of one year.

9. These appeals are disposed of in the above terms.