SUPREME COURT OF INDIA

State of Delhi

Vs.

Jitti

(C.K. Thakker and Altamas Kabir JJ.)

12.10.2007

JUDGMENT

C.K. THAKKER, J.

1. Both these appeals are filed by the State of Delhi against judgment and order passed by the High Court of Delhi in Criminal Appeal Nos. 111 and 47 of 1999. By the said order, the High Court confirmed an order of conviction recorded by the Additional Sessions Judge, Delhi in Sessions Case No. 98 of 1996 dated October 14/October 21, 1998, but restricted the sentence to the period already undergone by the convict.

2. Short facts of the case are that Didar Singh, Circle Inspector along with Constable Ram Karan was on patrolling duty on September 07, 1996. At about 8.15 p.m., they reached near car parking at old Lajpat Rai Market.

There they received secret information that two persons aged about 35-40 years were likely to come from the side of Bagichi Angoori Bagh and they were possessing jute bags containing poppy straw powder. They would catch a bus going to Punjab. On receipt of such information, SI Didar Singh organized a raid party along with police officials and 4/5 persons from general public. At about 8.35 p.m., two persons were apprehended. Both of them were carrying two jute bags on their heads. On inquiry, one of the accused disclosed his name as Jitti and the other gave his name as Vaishnu Dass, resident of District Hoshiarpur in Punjab. The secret information was then disclosed to both of them and they were given option to be searched in presence of Gazetted Officer or Magistrate.

They, however, declined the offer. Thereafter the search was carried out. From accused Jitti, 22 Kgs. of poppy straw powder was found whereas from other jute bag 23 Kgs. of poppy straw powder was recovered. Thus in all, 45 Kgs of poppy straw powder was found. Samples were taken from each jute bag and placed in two bags. The remaining poppy straw powder was kept in the same jute bags again. Usual seals were affixed. Samples were then sent to Central Forensic Science Laboratory. The result disclosed that samples were found to contain poppy straw powder.

3. After usual investigation, charges were framed against the accused under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act). The accused pleaded not guilty to the charges levelled against him and claimed to be tried.

4. The Additional Sessions Judge, Delhi after examining the evidence of witnesses produced by the prosecution, by an order of conviction recorded on October 14, 1998 held that it was proved beyond reasonable doubt that the accused was guilty of an offence punishable under Section 18 of the Act.

The accused was thereafter heard on the quantum of sentence and finally on October 21, 1998 the Court imposed punishment on the convict. The operative part of the order reads thus;

The convict has been convicted under Section 18 of the NDPS Act. The offence under Section 18 of the NDPS Act is punishable with rigorous punishment for a term which shall not be less than 10 years and shall also be liable to fine which shall not be less than Rs.1 lakh. As per the provisions of Section 18 of the NDPS Act, the minimum sentence is 10 years RI and fine of Rs.1 lakh. The Court has no discretion in the matter. Hence the convict is sentenced with RI for 10 years and to pay a fine of Rs.1 lakh. In default of payment of fine to undergo RI for 2 years. File be consigned to record room.

5. Being aggrieved by the order passed by the trial Court, the accused preferred appeals before the High Court of Delhi. As observed by the High Court, the counsel for the accused was not in a position to challenge the order of conviction and confined his arguments only on the question of sentence. It was submitted that the accused was found in possession of 45 Kgs of poppy husk/powder. Relying on the provisions of Section 41 of the Act as amended by the Narcotics Drugs and Psychotropic Substances Act, 2001 [Act 9 of 2001], it was submitted that as per the amended provision, commercial quantity in respect of poppy husk was 50 Kgs. The accused was found to be in possession of 45 Kgs. It was, therefore, submitted that when the quantity was not commercial quantity, rigorous imprisonment for ten years was not the minimum punishment, but the maximum punishment. It was only in respect of commercial quantity, the minimum punishment was for ten years. It was submitted that the accused had already undergone 5= years in jail and he should be released by passing an appropriate order that the sentence undergone by him was sufficient.

6. Though it was contended by the learned counsel for the State that the said provision (Section 41 as amended by Act 9 of 2001) would not apply to cases pending in appeals, the High Court held that a view was taken in Ginni Devi v. State, that the amendment would also apply to cases pending in appeal. Accordingly, the Court partly allowed the appeal, confirmed the conviction but reduced the sentence of imprisonment of the accused to imprisonment already undergone and directed to set him at liberty forthwith if not wanted in any other case. The accused was, therefore, set at liberty pursuant to the above order of the High Court.

7. Being aggrieved by the order passed by the High Court, the State approached this Court.

8. On March 3, 2003, when the matter was placed for admission hearing, it was found that there was delay of 209 days in filing the special leave petition in this Court. Notice was, therefore, issued for condonation of delay as also on special leave petitions. Interim stay of the operation of the judgment was also granted and bailable warrants were issued.

Since the warrants were not served, non- bailable warrants were issued on July 7, 2003.

Direction was also issued to the Commissioner of Police, Delhi to execute them. On September 8, 2003, when the matter came up before this Court, it was noted by the Court that though non-bailable warrants were issued, they could not be executed. No report of the Commissioner of Police in regard to the steps taken was filed. A direction was, therefore, issued to the Commissioner of Police, Delhi to file report within two days as to compliance of earlier order. Actions were thereafter taken to locate the respondent and finally warrants were executed. On September 26, 2003, delay was condoned, leave was granted. Since the respondent was arrested, meanwhile, he was ordered to be released on bail on his furnishing self bond of Rs.1,00,000/- (rupees one lakh) with two sureties

each for the like amount to the satisfaction of the trial Court.

It appears that the respondent could not furnish surety as per the order of this Court and therefore could not be released on bail. A prayer was, therefore, made on his behalf to hear the matter finally.

9. We have heard the learned counsel for the parties.

10. It was submitted by the learned counsel for the State that the High Court was not right in applying Section 41 of the Act as amended in 2001 to the present case. It was urged that proviso to sub-section (1) of Section 41 is explicitly clear and expressly states that it will not apply to cases pending in appeal. Section 41, as amended by Act 9 of 2001 reads thus;

41. Application of this Act to pending cases.-(1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

11. He, therefore, submitted that the appeal deserves to be allowed.

12. Learned amicus curiae for the respondent-accused submitted that the High Court was right in passing the impugned order.

The High Court had also taken a similar view in other cases. It was alternatively urged that on the facts and in the circumstances of the case, the respondent had undergone about ten years of rigorous imprisonment. Therefore, the appeal may be disposed of leaving the question open.

13. We have given our anxious consideration to the contentions raised by the parties. From the record, however, it appears that the incident took place on September 7, 1996 and on the same day, the respondent was arrested. It is stated by the respondent in Criminal Miscellaneous Petition Nos. 10614- 10615 of 2007 filed in this Court with the affidavit that he was in jail from September 7, 1996 from the day he was arrested till the final order was passed by the High Court of Delhi on April 2, 2002. Thus, he was in jail for more than 5= years. The said fact is also noted by the High Court while disposing the appeal. It was further stated in the affidavit that after the special leave petition was filed by the State in this Court, he was again arrested. From the two affidavits filed by V.

Renganathan, Deputy Commissioner of Police (Headquarters), I.P. Estate, New Delhi dated September 10, 2003 and September 24, 2003, it appears that the respondent was arrested on September 23, 2003. This Court, no doubt, passed an order releasing him on bail. In view of the fact, however, that the respondent could not comply with the conditions of bail, he was not released on bail and till today, he is in jail. Thus he is in jail since about ten years.

14. Taking into account the totality of facts and circumstances and factual scenario, namely, that the respondent-accused is in jail since about ten years, the High Court partly allowed his appeal and ordered to release him, the present appeal challenging the said decision is filed by the State, the respondent could not be released on bail as he was unable to furnish sureties, in our opinion, ends of justice would be met if without expressing final opinion on the question of law raised before us, we dispose of the appeals observing that since the respondent had undergone sentence of almost ten years, he should be set at liberty unless he is required in any other offence. As and when the question raised in these appeals will come up for consideration in an appropriate case, it will be decided on its own merits.

15. In view of the order passed above, the appeals as well as Criminal Miscellaneous Petition Nos. 10614-10615 of 2007 stand disposed of.