

# SUPREME COURT OF INDIA

Abbas Ali

Vs.

State of Punjab

Crl.A.No.1771 of 2011

(H.L.Dattu and Ranjan Gogoi JJ.)

15.01.2013

## ORDER

1. This Criminal Appeal is directed against the judgment and order passed by the High Court of Judicature of Punjab and Haryana at Chandigarh in Criminal Appeal No. 440-SB of 1997, dated 08.09.2008. By the impugned judgment and order, the High Court has confirmed the judgment of conviction and order of sentence passed by the Trial Court, dated 21.05.1997, whereby the appellant before us has been convicted for the offence punishable under Section 25 of the Narcotic Drugs Psychotropic Substances Act, 1985 (“the Act” for short) and sentenced to undergo rigorous imprisonment for a period of 10 years alongwith a fine of Rs. 1,00,000/-, in default of payment of which he was sentenced to undergo rigorous imprisonment for a further period of six months.

2. The facts, relevant to this appeal, are: A recovery of 10 bags containing rice polish and 37 bags containing poppy husk, in accordance with the provisions of the Act, was made from three accused persons (for short “A1”, “A2”, and “A3”, respectively). The said bags were being transported in a canter registered in the name of the appellant herein (referred to as A4 before the Trial Court). A1 to A3 were arrested at the time of recovery, however A4 was arrested later. Upon trial, A1 to A3 were convicted by the Trial Court for the offence under Section 15 of the Act and awarded similar sentence as the appellant herein. By the judgment and order of the High Court, dated 13.05.2008, in an appeal preferred by the said three accused persons, their conviction and sentence has been confirmed by the High Court. The said three accused persons are not before us in this appeal.

3. The Trial Court and the High Court have elaborately dealt with the case of the appellant in their respective judgments and orders. The appellant has neither been successful in rebutting the statutory presumption of the existence of culpable mental state under Section 35 of the Act nor has he been able to prove, beyond reasonable doubt, the statutory exception provided under Section 60(3) of the Act, before both the Courts below.

4. Before us, in this appeal, the learned counsel appearing for the appellant would take up the very same contentions that were canvassed before the Trial Court and the High Court, except that the appellant is a disabled person and, therefore, the disability of the disabled person, which is a vital factor, operating in his favor, so as to determine his culpability vis-à-vis the use of his car by A1 to A3 for indulging in transportation of the contraband substances has to be considered.

5. The aforesaid issue which we have noticed in our order, was not canvassed by the appellant either before the Trial Court or before the High Court and, therefore, we cannot permit the appellant to raise the said issue for the first time before us. Having said so, we have still looked into the disability certificate so produced by the appellant before this Court. The certificate would only show that one of the appellant's legs is amputated and, therefore, there is 60% physical disability. The factum of a person being physically disabled does not imply that he would accord his permission to the use of his vehicle for an offence punishable under the provisions of the Act and, therefore, in our opinion, the submission of the learned counsel is devoid of any merit and, thus, is liable to be rejected.

6. Insofar as the other submissions made by the learned counsel are concerned, the same have been answered both by the Trial Court and the High Court. Having carefully perused through the judgments and orders of the Courts below and re-appreciating the evidence on record, we are in agreement with the reasoning and the conclusion reached by the High Court. In our considered opinion, the conviction and sentence so passed by the Trial Court and confirmed by the High Court does not suffer from any perversity.

7. In that view of the matter, this appeal is liable to be dismissed and is, therefore, dismissed accordingly.

Ordered accordingly.