
(2010) 04 MP CK 0036

Madhya Pradesh High Court (Indore Bench)

Case No: None

Shantidas

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 5, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 30, 374
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 21, 42, 50, 57

Hon'ble Judges: S.R. Waghmare, J

Bench: Single Bench

Judgement

S.R. Waghmare, J.

By this criminal appeal filed u/s 374 of the Cr.P.C., the appellant Shantidas has challenged the judgment of conviction dated 10/8/2006 passed by the learned Special Judge (N.D.P.S. Act), District Ratlam in Special Case No. 35/2000 convicting the appellant for offence under Sections 8/21(c) of the N.D.P.S. Act and sentenced him to undergo rigorous imprisonment for ten years with fine of Rs. 1,00,000/-, in default of payment of fine to suffer additional simple imprisonment for one year.

2. Brief facts of the case, as alleged by the prosecution, are that on the date of the incident dated 3/9/2000, the Station-in-charge, Shri B.S. Malviya of police station, Industrial Area Jaora received information from the informant at 10 a.m. that in village Richavara that a person named Shantiram, who was known to be a smuggler was going to transport heroin illegally.

3. On receiving the information two panch witnesses were summoned by the Inspector Dinesh Nagar to Anwar and Sunil Bhati, they were informed regarding the raid and u/s 42 of the N.D.P.S. Act, the report was duly prepared and sent to the higher officer, S.D.O.P, Jaora. Thereafter Shri B.L. Solanki, Dy. Inspector, Shri Mahavir Prasad Mishra, Head Constable and Shri Om Prakash, Inspector and two panch

witnesses along with the measurement scale and other investigation material reached the Bhaiana crossing and sieged the track at 2 p.m. stopped the person coming from Mundlaram Bhaiana crossing and upon enquiry, he has stated that his name was Shantiram s/o Tulsidas Bairagi r/o village Richavara and of police station Pratapgarh (Rajasthan).

4. After being informed of his rights u/s 50 of the N.D.P.S. Act, whether he would like to be examined before the Magistrate or notified Officer, he agreed to the examination by Shri B.S. Malviya. The recovery memo was duly signed by the witnesses. Upon removal of his shirt, it was found that he had two plastic bags containing grey coloured powder tied to his waist. On being smelt and tasted and also along with the help of investigation kit it was found to be heroin powder. It was measured and weighed and found to be 3 kg. in all and two samples of 5-5 grms. each were taken from the bags and sealed in accordance with law. Rest of the contraband was also sealed and stamped and recovered from the possession of the accused and sent to the Forensic Expert. The seizure memo was also duly prepared. Charge sheet was filed against the accused appellant for offence u/s 8/21 of the N.D.P.S. Act. and offence was registered at crime No. 212/2000 after the FIR was lodged. The samples were duly sent for F.S.L. report after informing the S.D.O.P. Jaora u/s 57 of the N.D.P.S. Act. The spot map was duly prepared and on receipt of the F.S.L. report, it was found that the contraband contained sufficient amount of morphine for offence to be made out and hence the accused was committed to his trial.

5. The accused abjured his guilt, stating that he has been falsely implicated in the matter and took up his defence plea that there was previous enmity with the A.S.I. Lal Singh regarding agricultural land and therefore, along with Shri B.S. Malviya he had registered a false case against the accused appellant. In his defence, the accused examined his wife Bhanwarbai D.W.1. The trial Court on consideration of the documentary evidence and the testimony of prosecution witnesses and the defence witness Bhanwarbai D.W.1 came to the conclusion that all the provisions u/s N.D.P.S. Act regarding search, seizure and arrest were duly followed. The mandatory provisions under Sections 42 and 50 of the NDPS Act were all rigidly followed by investigation Officer and the other Officers during the course of their duty and there is no lacuna or lapses as alleged. There is no allegation of any tampering of the samples of seal by the Investigating Officer. The F.S.L. Report also indicated that Article A-1 contained 19.94% of morphine, whereas Article B-I contained 24.74% morphine (Ex.P/20) and the report was duly proved in accordance with the law and hence the trial Court convicted the accused for offence u/s 18-B of the N.D.P.S. Act and sentenced him as herein above stated.

6. Counsel for the appellant has very candidly stated that the accused appellant has undergone almost nine and a half years of the custodial sentence and he is still in jail at present. He has also candidly stated that he would not be aggrieved by the

conviction and sentence of the appellant passed by the learned Trial Court regarding the appellant for offence u/s 18-B of the NDPS Act and that the minimum sentence of ten years rigorous imprisonment as prescribed under the law has been imposed by the learned lower Court and the same was in consonance with the law. However, the appellant is aggrieved by the sentence imposing fine of Rs. 1,00,000/- and in default of payment of the said fine, the Trial Court had ordered that the offender would suffer an imprisonment of rigorous imprisonment of one year. Counsel has relied on *Shantilal v. State of Madhya Pradesh* (2008) 1 SCC (Cri.), whereby Their Lordships of Apex Court had considered the imposition of the reduction in period of imposition of custodial sentence in default of payment of the fine. The Apex Court had on considering the fact that although there was no express or specific provisions to order imprisonment in default of payment of fine, such power is explicit and can be always exercised by a Court subject to the relevant provisions of the I.P.C. and it directed that it was the duty of the Court to keep in view the nature of the offence, circumstance under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine. The Apex Court held thus:

However, on facts considering the circumstances of appellant-accused, that he was very poor, was merely a carrier, has to maintain his family, it was his first offence, because of his poverty, he could not pay the heavy amount of fine (rupees one lakh) and if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him, but also to his family members who are innocent, held though an amount of payment of fine or rupees one lakh which is minimum as specified in S. 18, NDPS Act, cannot be reduced in view or legislative mandate, ends of justice would be met if that part of direction is retained, but ordered that in default of payment of fine, the appellant shall undergo RI for six months instead of three years as ordered by trial court and confirmed by High Court u/s 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and for offence u/s 30 of the Criminal Procedure Code, 1973.

7. Counsel for the applicant has also relied on the judgment of this High Court under identical circumstances in the matter of Criminal Appeal No. 473/2002 *Mangilal v. Central Narcotics Bureau Ratlam (M.P.)*, whereby this Court had held that in default of payment of fine, the sentence of rigorous imprisonment for one year could be reduced to two months. And to bolster his submissions Counsel also relied on Cr.A. No. 939/2003 *Hussain v. State of M.P.* decided on 10.12.2009 whereby the same view has been reiterated. Hence, Counsel for the appellant has prayed that, on the grounds of parity, the appellant would be satisfied if the imposition of fine be modified suitably.

8. Counsel for the respondent/State, on the other hand, has also no objection and has also stated that the case of Shantilal v. State of M.P. (Supra) has been followed in a number of cases by our Court.

9. On considering the above submissions, on perusal of the impugned order and the material available in the case diary, I find that the sentence of conviction for offence u/s 8/21(c) of the NDPS Act against the appellant is impeccable and does not call for inference and is, therefore, upheld. However, considering the sentence regarding imposition of fine since the case of Shantilal (supra) has been followed in other cases, {Mangilal (supra) and Hussain (supra)} I find that it is a fit case under the circumstances and in the interest of justice, the prayer of the Counsel for the appellant is hereby allowed. The ends of justice would be met if the sentence regarding imposition of fine of Rs. 1,00,000/- is upheld, however, the default clause is amended as follows:

That the appellant shall undergo simple imprisonment for two months instead of one year in default of payment of fine of Rs. 1,00,000/- as ordered by the trial Court and if the appellant has undergone the substantive sentence of rigorous imprisonment for 10 years as well as the simple imprisonment for two months as modified by this judgment the applicant shall be set at liberty therewith under intimation to this Court in writing. It is made emphatically clear that he shall be released only after the period indicated herein above is over.

10. With the aforesaid observations and directions, the appeal is accordingly disposed of.