
(2007) 02 PAT CK 0089

In the Patna High Court

Case No : Criminal Appeal No. 240 of 2005

Birendra Rai and Laxman Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20B(2), 23

Citation : (2007) 2 BLJR 954

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Ashutosh Kr, Atal Bihari and Rajesh Kr, for the Appellant; Gopesh Kumar, , Assistant Public Prosecutor, for the Respondent

Judgement

Ghanshyam Prasad, J.—This appeal has been preferred against the judgment, of conviction and order of sentence dated 2.4.2005 passed by 1st Additional Sessions Judge, Bettiah in Trial No. 15 of 2001, Both the appellants have been found guilty u/s 20B(2)(c) of the N.D.P.S. Act and have been sentenced to undergo R.I. for ten years and to pay fine of Rs. 1,00,000/- in default to further undergo R.I. for one year.

2. On 24.4.2001 at 18.30, custom officials of Bettiah on receipt of secret information, raided one orchard and recovered about 100 kgms. of ganja from possession of the appellants. Accordingly, the same was seized in presence of two independent witnesses. Later on, sample was also sent to the, chemical analyst. After receipt of the report, prosecution was launched against both the appellants.

3. In course of the trial, charge u/s 20B(2)(c) as well as u/s 23 of the N.D.P.S. was framed. However, after trial, both appellants have been acquitted of the charge framed u/s 23 of the N.D.P.S. Act, but they have been convicted and sentenced in a manner said above u/s 20B(2)(c) of the N.D.P.S. Act.

4. In course of the argument, the learned Counsel for the appellants confined his

submission only on the point of sentence. He did not challenge the finding of the guilt of the appellants. It has been submitted that the learned court below has seriously erred in awarding the sentence to the appellants. In this case, provisions of Principal Act of N.D.P.S. shall apply in which the maximum sentence u/s 20 for possession of ganja is only upto five years with fine upto Rs. 50,000/-. However, the court below has awarded sentence under amended provision which came into force on 2nd October, 2002. It is further submitted that both the appellants have already remained in custody for much more than maximum sentence prescribed u/s 20B(1) of the Principal Act, 1985.

5. I find substance in the above submission of the learned Counsel for the appellants. The date of the offence is 24.4.2001 on which date Amended Act 9 of 2001 was not enforce. It came into force on 2nd October, 2002. Therefore, present case shall be governed by Principal Act of 1985. In Principal Act, the maximum punishment for possession of ganja u/s 20(B)(1) is only upto five years with fine upto Rs. 50,000/-. Apparently, the court below has committed grave error in awarding sentence under Amended Act in much excess of the maximum punishment provided under Principal Act. Both the appellants have already remained in jail since last five years and ten months.

6. In the result, this appeal is allowed in part. The sentence of both the appellants is modified to the period already undergone which shall include the period of default in payment of fine also. Both the appellants are directed to be released forthwith, if not wanted in any other case.