
(2013) 03 DEL CK 0307

In the Delhi High Court

Case No : Criminal A. 292 of 2006 and Criminal M.B. No's. 2096 of 2011 and 1431 of 2012

Chherinda Indi Gurunda

APPELLANT

Vs

The State (Govt. of NCT) Delhi

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 30
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 21, 29, 8(c)

Citation : (2013) 2 JCC 55

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Rakhi Dubey, for the Appellant; Fizani Husain, APP., for the Respondent

Judgement

S.P. Garg, J.—The appellant-Chherinda Indi Gurunda challenges correctness of judgment dated 07.01.2006 in Sessions Case No. 23/2005 arising out of FIR No. 298/2004, PS Timar Pur by which he was held guilty for committing offence punishable u/s 20 NDPS Act. Vide order dated 13.01.2006, the appellant was sentenced to undergo RI for 14 years with fine Rs. 1,00,000/- and in default of payment of fine to undergo SI for one year. Allegations against the appellant were that on 08.07.2004 at about 12.20 P.M. near Pontoon Bridge Turning, Outer Ring road, Timar Pur, Delhi he was found in possession of 2 kg. of Charas. The prosecution examined nine witnesses. In his 313 Cr.P.C. statement, the appellant pleaded false implication. The Trial Court after considering the evidence on record, held the appellant guilty of possessing 2 kg. of Charas in violation of NDPS Act and sentenced to undergo RI for 14 years with fine Rs. 1,00,000/-. Being aggrieved, the appellant has preferred the present appeal.

2. During the course of arguments, learned counsel for the appellant on instructions from the appellant-Chherinda Indi Gurunda stated that the appellant has opted not to challenge the conviction u/s 20 NDPS Act. She however, prayed

for modification of the order on sentence as the appellant has already undergone sentence for about more than 8 years. The appellant is very poor and is unable to deposit the hefty fine Rs. 1,00,000/-. The appellant is not a previous convict.

3. I have considered the submissions of the parties and have examined the Trial Court record. Since the appellant has not opted to challenge the findings of the Trial Court on conviction u/s 20 NDPS Act, the order of conviction of the Trial Court stands affirmed.

4. Regarding order on sentence, it reveals that the appellant was found in possession of 2 kg. of Charas and was sentenced to undergo RI for 14 years with fine Rs. 1,00,000/-. Fine Rs. 1,00,000/- has not been deposited. Nominal roll dated 25.02.2013 reveals that the appellant has already undergone sentence for 08 years, 07 months and 15 days as on 25.02.2013. The period has since increased to 08 years, 08 months and 06 days. It further reveals that the appellant is not a previous convict and is not involved in any other criminal case. His overall conduct in the jail is satisfactory.

5. In the case of " Shahejadjkhan Mahebubkhan Pathan Vs. State of Gujarat, , decided on 05.10.2012, the Supreme Court reduced the sentence from 15 years to 10 years as the appellant therein had already served nearly 12 years in jail. The order on payment of fine of Rs. 1,50,000/- was upheld but default sentence was reduced from RI for 3 years to RI for 6 months. The appellant therein was found in possession of 500 grams of brown sugar and was convicted for the offence punishable u/s 8(c), 21 and 29 of NDPS Act. The Division Bench of Gujarat High Court had dismissed the CrI.A.No. 11 & 75/2002 vide order dated 08.07.2002. Number of other judgments have been shown and placed on record whereby similar relief was given in various cases by this Court.

6. Considering all these facts and circumstances of the case and in the interest of justice, keeping in mind the peculiar facts of this case, the order on sentence is modified and the substantive sentence of the appellant u/s 20 NDPS Act is reduced to RI for 10 (Ten) years.

7. Regarding fine of Rs. 1,00,000/-, the appellant has expressed his inability to deposit the amount due to poverty. The amount of Rs. 1,00,000/- imposed by the Trial Court cannot be reduced. However, taking into consideration Section 30 of Cr.P.C. and the judgment of "Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat" (supra) where the default sentence was reduced from three years to six months, it is ordered that the appellant shall pay a fine of Rs. 1,00,000/- and in default of payment of fine he shall undergo SI for a period of four months.

8. The appeal filed by the appellant is disposed of in the above terms. Pending applications also stand disposed of. A copy of the order be sent to Jail Superintendent, Tihar Jail. Copy be also sent to the accused/appellant through Jail Superintendent. Trial Court record along with copy of this order be sent back to the Trial Court.