

(2007) 07 PAT CK 0179

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 753 of 2004

Faudi Mukhiya

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

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

Citation : (2007) PLJR 679

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : Shishir Kumar, for the Appellant; Nawal Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Mohan Prasad, J.—This appeal is against the judgment dated 14th September 2004/15th September 2004 of the 2nd Addl. Sessions Judge, Sitamarhi passed in S.T. No. 8 of 2003/1 of 2004 whereby the appellant has been convicted u/s 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as "the Act") and sentenced to rigorous imprisonment for five years and a fine of Rs. 25,000/- (twenty-five thousand) and, in default of payment of fine, to undergo simple imprisonment for one year. As per the case of prosecution, 2 Kg. of Ganja wrapped in plastic and kept under Chauki in the house of the appellant was recovered and thus, the recovery was alleged from the possession of the appellant on 25th April, 2002. The appellant was also apprehended at the spot.

2. As many as ten witnesses were examined by the prosecution. P.Ws. 1 & 2 were the seizure witnesses. P.Ws. 3, 4, 5, 6 and 7 were the members of the Police Patrolling Party which conducted the search and recovery. P.W. 8 was the CO. P.Ws. 9 & 10 were the Advocate Clerks who deposed during the trial.

3. During hearing, Mr. Shishir Kumar, Advocate for the appellant argued this

appeal with the permission of Mr. Prasoon Sinha who has filed Vakalatnama and who is also present in court. Mr. Shishir Kumar did not challenge this appeal, so far the conviction is concerned, but he challenged the quantum of sentence awarded to the appellant, he submitted that the recovery is of only 2 Kg. of Ganja which is very close to the "small quantity" i.e. 1 Kg. for which a sentence of only six months has been prescribed u/s 20(A) of the Act. Referring to the Table annexed with the Act Mr. Kumar pointed out that under Entry No. 55, 1 Kg. of Ganja has been shown as "small quantity" and 20 Kg. has been shown as "commercial quantity". Further referring Section 20(B) of the Act, Mr. Kumar pointed out that in case the quantity of Ganja is greater than the "small quantity" but lesser than "commercial quantity" the sentence may go upto ten years and a fine upto Rupees one lac can be imposed. Mr. Kumar further argued that the recovered quantity of 2 Kg. of Ganja is close to the "small quantity" and it is far less than "commercial quantity". In such view of the matters. Mr. Kumar argued for reduction in the quantum of sentence awarded to the appellant. The conviction of the appellant is not challenged.

4. There is also evidence on record to support the recovery. Hence, the conviction of the appellant u/s 20(B) of the Act is sustained.

5. So far the quantum of sentence is concerned, I feel that in the facts and circumstances of the case, a sentence of rigorous imprisonment for three years and a fine of Rs. 10,000/- (ten thousand) and in default of payment of fine, simple imprisonment for six months will meet the ends of justice. Therefore, the sentence is reduced to that extent and the appellant will stand convicted u/s 20(B) of the Act and be sentenced to rigorous imprisonment for three years and a fine of Rs. 10,000/-(ten thousand) and in default of payment of fine, to undergo simple imprisonment for six months. With the modification in the sentence, as above, this appeal is dismissed.