
(2019) 01 MP CK 0028
In the Madhya Pradesh High Court
Case No : Criminal Appeal No.1350 Of 2005

Harish and Another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Narcotics Drugs and Psychotropic Substances Act, 1985 — Section 8, 20, 20(b)(2)(b), 31, 35, 42, 42(2), 50, 55, 57

Citation : (2019) 01 MP CK 0028

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Siddhartha Kumar Jain, Bhuwan Deshmukh

Final Decision : Dismissed

Judgement

The present appeal is arising out of judgment of conviction dated 08/04/2005 passed in S. S. T. No.15/2004 decided by Special Judge (NDPS Act), Shajapur. The appellant No.1 Harish has been convicted for offences under Section 8 read with Section 20(b)(2)(b) and Section 31 of the Narcotics Drugs and Psychotropic Substances Act, 1985 and has been sentenced to undergo 7 years rigorous imprisonment with fine of Rs.70,000/- and in case of non-payment of fine to undergo further 1 year rigorous imprisonment. The appellant No.2 Umesh has been convicted for offence under Section 8 read with Section 20(b)(2)(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985 and has been sentenced to undergo 5 years rigorous imprisonment with fine of Rs.50,000/- and in case of non-payment of fine to undergo further 1 year rigorous imprisonment.

As per prosecution case, on 20/06/2004 at about 01:30 PM at Shujalpur - Ashta Road, the appellants were subjected to a search and they were found in possession 16.200 Kilograms of Marijuana (Ganja). An information was received to the police by the informant that two persons riding a motorcycle bearing No.MFV-0404 are carrying the contraband and on the basis of search a Panchnama was prepared, copy of which was sent to Deputy Superintendent of

Police and thereafter, force was called from the police station and motorcycle was intercepted. Harish was driving the motorcycle and Umesh was the pillion rider.

As stated earlier, 16.200 Kilograms Marijuana was recovered and thereafter, a criminal case was registered and a report was send to Police Station Shujalpur. The criminal case was registered at Crime No.244/04 for offence under Section 8/20 of the Narcotics Drugs and Psychotropic Substances Act, 1985. The contraband seized was kept in a sealed packet and a sample was sent to Forensic Science Laboratory, Indore and a report (Ex.-P/33) was received from the Forensic Science Laboratory, Indore that the contraband seized is Marijuana (Ganja). As required under Section 57, a report was sent to Deputy Superintendent of Police and Superintendent of Police and thereafter, a charge sheet was filed in the matter and the trial has taken place.

The prosecution has examined witnesses in support of seizure namely Sub Inspector N. R. Dangi (PW-11), the Panch Witness Ashok (PW-3), Kamlesh (PW-1), Constable came with Police Party Jitendrasingh (PW-6), Tehsildar Milind Thoke (PW-9), person who has weight the contraband Bhura (PW-7), Head Constable Parshuram Joshi (PW-8), Constable who took the sample to FSL Surendrasingh (PW-5), Reader to Deputy Superintendent of Police Jahangir Kha (PW-1), Reader to Superintendent of Police Sitaram Chouhan (PW-2) and Investigating Officer Sub Inspector G. B. Sharma (PW-1). After examining the witnesses the appellants have been convicted and in fact they were not granted bail by this Court also. They were detained on 20/06/2004 and they have already undergo the sentence awarded to them.

The moot question before this Court is that whether the judgment of conviction deserves to be set aside or not. In the present case, as reflected from the statement of witnesses, Sub Inspector N. R. Dangi (PW-11) has stated that he has received an information from the informant on 20/06/2004 that two persons were carrying contraband on a motorcycle bearing No.MFV-0404 and based upon the aforesaid information entry was made in Rojnamcha Sanha No.611 (Ex.-P/34). Two punch witnesses were called by Constable Bahadursingh and it was again entered in the Rojnamcha Sanha (Ex.-P/35).

The information about the seizure and the recovery of contraband and the entire episode was informed to the higher authorities SDOP and the SDM and the same has been established from the statement of the witnesses and therefore, there was a compliance of the provisions as contained under Section 42(2) of the Narcotics Drugs and Psychotropic Substances Act, 1985. The appellants were also informed about their rights keeping in view Section 50 of the Act.

The statement of witnesses also establishes that Ganja was recovered from both the accused persons. The evidence on record also establishes that there was substantial compliance of Section 42, 50, 55 and 57 of the Act and the recovery of contraband and the FSL report establishes that the appellants were carrying 16.200 Kilograms Ganja. No satisfactory explanation was offered by

them as to how and why they were carrying the contraband articles and keeping in view Section 35 of the Act this Court is of the opinion that the appellants were rightly convicted by the trial Court.

This Court does not find any reason to interfere with the judgment of conviction and therefore, the appeal stands dismissed, however, as no bail was granted to the appellants, they have already undergo the sentence awarded to them. They be released forthwith, if not released so far, in case they are not required to be in jail in any other criminal case.

Certified copy as per rules.