

(2021) 06 MP CK 0198
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 188 Of 2012

Ismile & Anr

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 29, 30, 30(1)(b), 374
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 18, 21, 21(c),
22, 23, 25, 29, 30, 38, 50
Indian Penal Code, 1860 — Section 120B

Citation : (2021) 06 MP CK 0198

Hon'ble Judges : Shilendra Shukla, J; Sujoy Paul, J

Bench : Division Bench

Advocate : Sanjay Sharma, Raju Ajmeri, Anil Ojha, Allarakh, Manoj Soni

Final Decision : Partly Allowed

Judgement

Sr.No.1, Conviction under Section, Sentence,,

,, Imprisonment, Fine Amount, Imprisonment in lieu of fine

Appellant No.1 Ismile, 8/21(c)/29 of NDPS Act, 15 years RI, 2 lacs, 5 years RI

Appellant No.2 Zakir, 8/21(c) of NDPS Act, 5 years RI, 2 lacs, 5 years RI

14. In view of the above, it is relevant to mention Section 30 of the Code which speaks about sentence of imprisonment in default of fine: " , , , ,

â??30. Sentence of imprisonment in default of fine â?" (1) The Court of a Magistrate may award such term of imprisonment in default of payment of , , , ,

fine as is authorized by law: , , , ,

Provided that the term- , , , ,

a) is not in excess of the powers of the Magistrate under Section 29 ; , , , ,

b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the",,,,

Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.,,,,

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by,,,,

the Magistrate under Section 29.â???,,,,

15. It is clear that clause (b) of sub-section (1) of Section 30 of the Code authorizes the Court to award imprisonment in default of fine up to 1/4th of,,,,

the term of imprisonment which the Court is competent to inflict as punishment for the offence. However, considering the circumstances placed",,,,

before us on behalf of the appellants-accused, viz., they are very poor and have to maintain their family, it was their first offence and if they fail to pay",,,,

the amount of fine as per the order of the Additional Sessions Judge, they have to remain in jail for a period of 3 years in addition to the period of",,,,

substantive sentence because of their inability to pay the fine, we are of the view that serious prejudice will be caused not only to them but also to their",,,,

family members who are innocent. We are, therefore, of the view that ends of justice would be met if we order that in default of payment of fine of",,,,

Rs.1.5 lakhs, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the Additional Sessions Judge and confirmed by the High",,,,

Court.,,,,

9. Ultimately, the prayer of both the appellants was allowed on the quantum of sentence and the substantive jail sentence was reduced from 15 years",,,,

of RI to the period already undergone, which was more than 10 years and sentence in default of payment of fine was also reduced to one year of RI.",,,,

10. The evidence available on record in respect of the present appellants was considered.,,,,

11. The findings have been arrived at against the appellants after appropriate appreciation of evidence. The findings have not even been controverted.,,,,

Consequently, the conviction of the appellant No.1 under Sections 8/21(c)/29 of NDPS Act and appellant No.2 under Section 8/21(c) of NDPS Act",,,,

stands affirmed. Regarding the quantum of sentence, we are of the considered opinion that appellants deserve to be treated in terms of quantum of",,,,

sentence in the same manner in which two other co-accused Gurmel Singh and

Thana Singh have been dealt with. Both of these appellants have,,,,
completed more than 10 years of in jail as per jail report dated 10.3.2021. The
aforesaid period mentioned in jail report would be adequate jail,,,,
sentence. Regarding default stipulation on non-payment of fine, the period of jail
sentence on non-payment of fine also stands reduced from 5 years to" ,,,,
one year. This sentence would be apart from the period mentioned in jail report
dated 10.3.2021.,,,,
12. The appeal thus stands partly allowed in terms of quantum of sentence.,,,,
13. A copy of the judgment, jail report and the original record of the case be sent
to the concerned trial Court for perusal and compliance." ,,,,