
(2013) 03 DEL CK 0135
In the Delhi High Court
Case No : Criminal Appeal 869 of 2010

Mushtaq Ahmed Wani @ Nazeer

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 2 JCC 1070

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

Bench : Single Bench

Advocate : Vishal Gosain and Mr. Harsh Bera, for the Appellant; Fizani Husain, APP., for the Respondent

Judgement

S.P. Garg, J.—The appellant-Mushtaq Ahmed Wani @ Nazeer challenges judgment dated 12.04.2010 in Sessions Case No. 09/2007 arising out of FIR No. 91/2006 registered at P.S. Special Cell by which he was held guilty and convicted for offences punishable u/s 20/21 of Unlawful Activities (Prevention) Act and sentenced to undergo RI for seven years with fine Rs. 25,000/- and RI for eight years with fine Rs. 25,000/- under both the Sections respectively. Benefit u/s 428 Cr.P.C. was extended. Allegations against the appellant were that on 25.11.2006 at about 06.15 P.M. at bus stop near Ramlila Ground, Netaji Subhash Marg, opposite Lal Quila, he was found in possession of a black colour shoulder bag. On search of the bag Indian currency in the denomination of Rs. 500 in 12 wads amounting to Rs. 6 lacs was recovered. During investigation, it revealed that the appellant was a Constable bearing No. Exe 021778778 in Jammu & Kashmir Police. The appellant was not able to account for the money recovered from his possession. It was discovered that he was an active member of banned militant outfit LeT and the cash was collected through Hawal operative at Kabootar Market opposite Lal Quila. He was also found in possession of mobile bearing No. 9999239734, ID card and one matrix. He was charged under Sections 7/18/20/21 of the Act. The prosecution examined twenty nine witnesses to substantiate the charges. In his 313 Cr.P.C. statement, the accused pleaded

false implication. He examined one witness in defence. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, convicted the appellant u/s 20/21 of the Act only. Being aggrieved the appellant has preferred the appeal.

2. During the course of arguments, learned counsel for the appellant on instructions from the appellant-Mushtaq Ahmed Wani @ Nazeer stated that the appellant has opted not to challenge the conviction u/s 20/21 of the Act. He however, prayed for reduction of the sentence from eight years to seven years as the appellant is not a previous convict and is not involved in any other criminal case. Learned APP has opposed reduction in sentence.

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 20/21 of the Act, the order of conviction of the Trial Court stands affirmed.

4. Regarding order on sentence, it reveals that the appellant has been sentenced to undergo RI for seven years with fine Rs. 25,000/- u/s 20 of the Act and RI for eight years with fine Rs. 25,000/- u/s 21 of the Act. Counsel for the appellant has volunteered to deposit the fine imposed by the Trial Court. Nominal roll dated 05.07.2012 reveals that the appellant has already undergone sentence for five years and seven months as on 05.07.2012. He also earned remission for six months. The period has since increased and only few months remain as unexpired portion of substantive sentence. Nominal roll further reveals that appellant is not a previous convict and is not involved in any other criminal case. There were two complaint cases against the appellant in J & K and it is stated that he has been acquitted in the said cases.

5. Considering all these facts and circumstances of the case and that the substantial period of sentence is already undergone by him, and the fact that he is not a previous convict and is not involved in any other criminal case, order on sentence is modified and sentence RI for eight years u/s 21 of the Act is reduced to seven year. Other terms and conditions of the order of sentence dated 19.04.2010 left undisturbed. The appeal stands disposed of in the above terms. Trial Court record (if any) be sent back forthwith.

CRL. M.B. 1028/2010

Application stands disposed of as being infructuous.