
(2010) 09 GUJ CK 0133
In the Gujarat High Court
Case No : Criminal Appeal No. 2144 of 2008

Narbheram @ Munno Laxmanbhai Joshi	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 31

Citation : (2010) 09 GUJ CK 0133

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Rekha H. Kapadia, for the Appellant; H.H. Parikh, APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The appellant-original accused has filed this Appeal u/s 374 of Cr.P.C. against the Judgment and order of conviction and sentence dated 31.3.2005 passed by the learned Additional Sessions Judge, 6th Fast Track Court, Rajkot, in N.D.P.S. Case No. 08 of 2004, whereby the learned Additional Sessions Judge has held the appellant/accused guilty for the offence u/s 22 and 31 of N.D.P.S. Act and sentenced him to undergo Rigorous Imprisonment for 5 years with fine of Rs. 50,000/- i/d to further undergo RI for one year.

2. The brief facts of the case of prosecution are that on 12/9/2004 at about 17.50 hours the Police Officer received the information from the informant that one Narbheram @ Munno Laxmanbhai Joshi (appellant/accused herein) who is wearing green pant and yellow shirt is illegally selling the brown-sugar. The said information was noted down in Control Room, station diary No. 10/2004 and the same was also reported to the Deputy Commissioner. It is alleged that the Officer from F.S.L. was also informed to come with kit. Two Panchas were called and preliminary panchnama was prepared. Thereafter, as per the information the Police party along with the Panchas reached the spot and upon seeing the person with aforesaid description (appellant herein) stopped him and upon searching

him found one plastic bag containing contraband article (brown-sugar), weighing 9 grams was found from the pocket of pant of the appellant. Thereafter the appellant/accused was arrested.

3. Necessary investigation was carried out by the Police and after completion of investigation the charge-sheet against the accused came to be submitted before the Court. The learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused the prosecution has examined the witnesses and also relied upon documentary evidence and at the end of trial, after recording the statement of the accused u/s 313 Cr.P.C., and after hearing the arguments on behalf of the prosecution and the defence, the learned Additional Sessions Judge held the appellant/accused guilty of the offences charged against him and awarded sentence as narrated herein above.

5. Being aggrieved by and dissatisfied with the aforesaid Judgment and order of conviction and sentence the appellant/accused has preferred this Appeal.

6. Heard learned advocate Ms. Rekha Kapadia, appearing on behalf of the appellant and learned APP Mr. H.H. Parikh on behalf of the respondent State. I have gone through the Judgment and order passed by the trial Court. I have also considered the documents produced on the record of the case.

7. Learned Advocate, appearing on behalf of the appellant/accused, has contended that she is not arguing the matter on merit. The learned Advocate for the appellant has contended that the appellant has already undergone the sentence awarded by the trial Court, however, because of poor condition the appellant could not pay the amount of fine and, therefore, the appellant/accused is undergoing sentence awarded in default of payment of fine, and out of one year's sentence for default the appellant has already undergone the period of sentence of about 11 months. She has contended that very small quantity was found from the appellant. She has contended that looking to the facts and circumstances of the case the broad view is required to be taken and the sentence which the appellant has already undergone may be treated as sentence and the appellant may be set at liberty forthwith.

8. Learned APP has supported the Judgment and order passed by the Sessions Court and contended that looking to the seriousness of offence no interference is of this Court is called for.

9. I have gone through the Judgment and order passed by the learned Additional Sessions Judge and also gone through the documents produced before me. I have also considered the submissions made by the learned Advocates for the parties.

10. Looking to the facts and circumstances of the case and looking to the fact that since the appellant/accused has already undergone the sentence awarded by the trial Court, but, because of the poor condition of the appellant, he could

not pay the amount of fine he is in jail and such period of punishment is also going to be completed after some days, therefore, if the sentence already undergone by the appellant/accused be treated as sentence the same would meet with the ends of justice.

11. Accordingly, this Appeal is partly allowed only on the quantum of sentence. The Judgment and order dated 31.03.2005 passed by the learned Additional Sessions Judge, Fast Track Court, Rajkot, in N.D.P.S. Case No. 8 of 2004 is confirmed. The appellant/accused has already undergone the sentence imposed by the learned Addl. Sessions Judge. However, as the appellant/accused has not paid the amount of fine and he is at present undergoing sentence of one year for non-payment of fine amount, out of which he has already undergone the sentence of about 11 months. Therefore, the said sentence is modified to the extent that the sentence which he has already undergone in default of payment of fine may be treated as sentence and now he may be set at liberty forthwith if he is not required to be detained in any other case. Rest of the judgment and order passed by the Sessions Court is hereby confirmed.