

(2011) 11 GUJ CK 0081
In the Gujarat High Court

Case No : Criminal Appeal No. 1678 of 2005 With Criminal Appeal No. 1601 of 2006

Sannimatai Georgematai Christian

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

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

Citation : (2011) 11 GUJ CK 0081

Hon'ble Judges : Bankim N. Mehta, J;A.L. Dave, J

Bench : Division Bench

Advocate : Rajesh M. Agrawals, for the Appellant; Pandya, APP for Opponent(s) 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice A.L. Dave

1. These two appeal arise out of judgement and order rendered by Sessions Court, Porbandar, on 21.4.2005 in Sessions Case No. 21 of 2004 convicting appellant Sannimatai Georgematai Christian (Criminal Appeal No. 1678 of 2005) for offence punishable u/s 20(b)(i) of Narcotic Drugs and Psychotropic Substances Act and sentencing him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 50,000/-, in default to further undergo rigorous imprisonment for one year.

2. Brief facts of the case are that the appellant was found to be travelling on 15.4.2004 in auto rickshaw GJ-11-V-218 at about 18.30 hours near Ramdun Mandir with maroon colour rexine bag. The said rickshaw was intercepted by police and on being searched, ganja weighing 11.100 kg. Was found from the bag. The appellant did not hold any pass/permit to possess ganja. He was, therefore, arrested and prosecuted before the trial Court. The trial Court by the impugned judgement recorded conviction and awarded sentence as stated

hereinabove and hence this appeal.

3. Learned advocate Mr. Agrawal for the appellant submitted that the appellant has been in jail since the date of his arrest i.e. 15.4.2004. He is convicted for possessing 11.100 kg. ganja, a contraband article under NDPS Act. The said quantity is larger than small quantity but smaller than commercial quantity and the punishment prescribed u/s 20(b)(ii)(B) is 10 years with fine which may extend to Rs. 1 lakh.

4. Learned advocate Mr. Agrawal stated that he does not challenge the conviction but he only challenges the sentence part. According to him, the sentence is unduly harsh. The appellant has been in jail for 7 years and 6 months. He is inflicted with highest punishment prescribed in absence of any special reason for it. The quantity found from him is almost half of the maximum quantity prescribed but being less than the commercial quantity. The appellant is a poor person and mercy may be shown to him.

5. Learned Additional Public Prosecutor Mr. Pandya submitted that the trial Court has awarded punishment considering the facts of the case and has used its discretion and this Court may not therefore interfere with the use of judicial discretion in exercise of appellate powers.

6. Having heard rival sides, the only question that requires to be addressed by us is whether the punishment awarded to the appellant requires to be interfered with.

7. In this context, it would be appropriate to note that the prosecution or the trial Court has not indicated any reason for awarding highest substantive punishment prescribed under law to the appellant except stating that the punishment is awarded with a view to certain example in society and to protect the youth of the society. In our view, when there is no reason like the appellant being habitual offender or involved in any other criminal activity, award of highest punishment is not justified. It is a well known fact that narcotic drugs and psychotropic substance are great menace to the youth of the society and therefore the legislature in its wisdom came out with this legislation but when the legislature in its wisdom has prescribed maximum punishment of 10 years imprisonment for seizure of quantity larger than the commercial quantity of ganja, the same could not have been awarded when the quantity was almost 55% to 60% of the maximum quantity for the category. The punishment is, therefore, disproportionate to the gravity of offence and we, therefore, deem it proper to accept the appeal only so far as it relates to the award of punishment.

8. It was also contended that the appellant is a very poor person. He comes from Kerala and no relatives of him are even trying to contact him because of poverty. The imposition of fine of Rs. 50,000/- is therefore a little harsh in our opinion.

9. While allowing the appeal partly, we are of the view that ends of justice would be met if the punishment awarded to the appellant is reduced to rigorous

imprisonment for 6 years with fine of Rs. 25,000/-, in default to undergo rigorous imprisonment for 3 months.

10. The appeal filed by the appellant i.e. Criminal Appeal No. 1678 of 2005 is partly allowed. The conviction of the appellant for the offence punishable under NDPS Act is confirmed. The sentence awarded is substituted with rigorous imprisonment for 6 years with fine of Rs. 25,000/-and in default, to undergo rigorous imprisonment for 3 months. The appellant would be entitled to benefit of set off in accordance with law.

11. Appeal No. 1601 of 2006 is preferred by the State for enhancement. In light of the foregoing discussion, we do not find any merit in appeal. The appeal must fail and stands dismissed.