

(1999) 06 BOM CK 0063

In the Bombay High Court

Case No : Criminal Writ Petition No. 121 of 1997

Shri Shrirang Krishnaji Jadhav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)
Criminal Procedure Code, 1973 (CrPC) — Section 235, 360
Evidence Act, 1872 — Section 59, 61, 8
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (2000) 5 BomCR 519

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : R.S. Kale, for the Appellant; S.R. Shinde, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—The appellant - accused has challenged by this appeal his conviction u/s 66(1)(b) of Bombay Prohibition Act, by which he was sentenced to suffer S.I. for three months and to pay a fine of Rs. 500/-, in default to suffer S.I. for one month.

2. As per the prosecution case the accused was apprehended by the police on 24-4-1990 and 12 ganja packets and 13 coins of Re. 1/- each were found with the accused. The ganja that was seized was sent to the CA, who confirmed that it was dried heads of hemp plant (ganja). Thereafter the appellant-accused was charge sheeted before the Sessions Court, Solapur. On 19-12-1996 charge sheet u/s 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and also u/s 66(1)(b) of Bombay Prohibition Act (BP Act) were framed against the accused. Prosecution examined in all six witnesses, two of which were the panchas. However, one of the panchas, namely, Haribhai Pralhad Salunke (P.W. 4) turned hostile and did not support the prosecution. However, another panch witness Subhash Nagnath Ghodake (P.W. 5) supported the prosecution case.

3. After appreciating the evidence, the Sessions Court, Solapur, acquitted the accused of offence u/s 20(b) of the NDPS Act for non-compliance with the provisions of section 50 of the NDPS Act but convicted the appellant-accused u/s 66(1)(b) of BP Act and sentenced as aforesaid.

4. Counsel for the appellant-accused contended that P.W. 5 panch witness who supported the prosecution had initially in his examination-in-chief stated that 12 ganja packets and 13 coins of Re. 1/- each were with the police but the witness changed his version and thereafter stated that these ganja packets and 13 coins were with the accused. He therefore contended that since the only important and independent witness of the prosecution has given two versions, the accused was entitled for benefit of doubt.

5. On the other hand it was contended by the learned A.P.P. that though witness P.W. 5 has stated that 12 ganja packets and 13 coins were with the police, he immediately in the examination-in-chief itself and without any pause or break corrected himself and stated that those ganja packets were found with the accused and at that time he was standing under the tree near the temple. He supported Sanjay Tatyrao Kulkarni (P.W. 1) P.C. buckle No. 1050 and the panchanama.

6. A perusal of the paper book containing the evidence of the prosecution shows that there was no cross-examination of any of the prosecution witnesses at all. Each witness and particularly P.W. 5 and P.W. 1 were put a couple of formal questions and no attempt was made to challenge their evidence seriously. It appears that the evidence of these two important witnesses and the effect of their evidence was not at all seriously anticipated by the defence and no effort was made in the cross-examination to dislodge them from their testimony or make their evidence suspicious or doubtful. There is no cross-examination of P.W. 5 as to from where the ganja was seized, whether it was seized from the persons of the accused or something which he was carrying whether it was in his shirt or in his pant.

7. In the absence of any such cross-examination the trial Court was perfectly justified in accepting the evidence of P.W. 1 and P.W. 5 and in convicting the accused for the offence of possession of ganja.

8. It is also pertinent to note that in cases of seizure of contraband, the investigation agency has to follow a particular procedure regarding sealing and sampling of the contraband, regarding their custody in the police station and sending the contraband to the C.A. for analysis. But on this aspect also there was no cross-examination. Apart from this, no defect in the prosecution case could be pointed out by the Counsel for the appellant on the basis of which the Court could have accepted the case of the petitioner for trial.

9. Counsel for the appellant accused alternatively submitted that the accused be given benefit of doubt u/s 360 of Cr.P.C. However, I do not think that in cases under BP Act, section 360 of Cr.P.C. can be invoked by the Court because the

offences under the BP Act are offences against the society.

10. Alternatively, it was contended by the Counsel for the appellant-accused that considering the weight and value of the ganja that was 30 grams and Rs. 15/-, the sentence should be reduced. The learned A.P.P. did not seriously oppose this prayer and therefore considering the prayer, I pass the following order :

ORDER

Appeal is partly allowed. Conviction of the accused u/s 66(1)(b) of the Bombay Prohibition Act is maintained. His sentence is reduced from three months S.I. to one month S.I. and fine of Rs. 500/- in default S.I. for one month. Appellant-accused to surrender before the Sessions Court, Solapur, within three weeks from today. Writ be immediately sent to the trial Court.

11. Appeal partly allowed.