

2022 LiveLaw (SC) 667

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; J., C.T. RAVIKUMAR; J.
AUGUST 10, 2022**

**CRIMINAL APPEAL NO(S).1218 OF 2022 (Arising out of SLP(Criminal) No(s). 4935 of 2022)
BUDHIYARIN BAI *versus* STATE OF CHATTISGARH**

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 20(b)(ii)(C), 32B - While imposing higher than the minimum punishment, such of the factors which are to be taken into consideration have been provided under Section 32B of the NDPS Act - The old age of the accused, who is a poor illiterate lady completely unaware of the consequences - Sentence reduced.

(Arising out of impugned final judgment and order dated 26-02-2018 in CRA No. 10/2013 passed by the High Court of Chhatisgarh at Bilaspur)

For Petitioner(s) Ms. Sangeeta Kumar, AOR Ms. Vidushi Garg, Adv. Ms. V. Garg, Adv.

For Respondent(s) Mr. Vishal Prasad, AOR Ms. Ritika Sethi, Adv.

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 26th February, 2018 upholding conviction of the appellant for the offence under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter being referred to as the "NDPS Act") and sentenced to 15 years' rigorous imprisonment and a fine of Rs.One Lakh, in default to pay fine, a sentence of rigorous imprisonment for a period of 3 years to be undergone separately.
3. The notice was issued by this Court by an Order dated 13th May, 2022 limited to the quantum of sentence.
4. The facts of the case relevant for the purpose are that the appellant is a poor illiterate lady and a senior citizen at the time of the alleged incident, i.e., 15th January, 2011, who, along with her two children, Pila Ram and Rajkumar alias Raju was charged under Section 20(b)(ii)(C) of the NDPS Act for having joint possession of the commercial quantity of illegal 'Ganja'(Cannabis) of 05 quintal and 21.5 kilogram, which was, as alleged, in their joint knowledge. Other co-accused Rajendra Tiwari and Idris Khan were charged under Section 27-A of the NDPS Act that they delivered the illegal cannabis in the house which was in possession of accused appellant at Village Chikhali, Police Station Dondi and thereby facilitated trafficking of cannabis carried out by appellant and her two children(co-accused Pila Ram and Rajkumar alias Raju).
5. The case of the prosecution in brief is that on 15th January 2011, the then station-in-charge of Police Station Dondi, PW-7 Vinay Singh Baghel, on being informed via telephone by station-incharge Rajhara about accused appellant of Village Chikhali keeping 'ganja'(Cannabis) in her house for selling; gave this information to C.S.P. Rajhara through telephone and prepared a written report in this regard and sent it via Constable No. 1480. Thereafter, PW-7 Vinay Singh Baghel along with his beat staff,

reached Village Chikhali for action and summoned witnesses Komal Singh and Chandrika Bai. Informing accused appellant about the information and after giving notice and consent for search proceedings, prepared the consent Panchnama. Station-in-Charge Vinay Singh Bhaghel prepared his search Panchnama by allowing the accused appellant to search him, police staff and witnesses first.

6. Thereafter, upon conducting lawful search of the house of the accused appellant in front of the witnesses, 'ganja'(cannabis) was found in twenty twine sacks, search and seizure of Panchnama of which was prepared. After physical verification of scales from weigher Devlal Sinha, and upon weighing the recovered ganja, total weight of ganja packed in 20(twenty) sacks was found to be 05 quintals, 21.5 kilogram. From each of the said sacks, two samples of 50-50 gms. each were taken and the original ganja was labelled 'A' to 'T' and sample packets as "A-1", 'A-2' till 'T-1', 'T-2'. After the ganja(cannabis) and sample packets were sealed and seized, the appellant was given a notice under Section 91 CrPC. She failed to produce any document in relation to being in possession of said cannabis. Accused appellant on being questioned stated to be carrying on the trade of cannabis together with her two sons, Pila Ram and Raj Kumar alias Raju as well as with Rajendra Tiwari and Idris Khan.

7. The FIR came to be registered and after completion of investigation, charge-sheet under Sections 20(b) and 27-A of the NDPS Act and Section 299 IPC was filed implicating 5 accused persons including the present appellant.

8. The trial Court framed the charge under Section 20(b)(ii)(C) of the NDPS Act against the present appellant and two other persons, namely, Pila Ram and Raj Kumar alias Raju and two other persons, namely, Rajendra Tiwari and Idris Khan were charged for the offence punishable under Section 27-A of the NDPS Act.

9. So as to hold the accused persons guilty, the prosecution examined 09 witnesses in all and statements of accused persons were recorded under Section 313 CrPC in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

10. The trial Court, after hearing the learned counsel for the parties, held the appellant guilty for the offence under Section 20(b) (ii)(C) of the NDPS Act and acquitted other four persons of all the charges and while the matter being heard for sentence, it was pointed out that the appellant is an old illiterate lady from the rural background, having no previous criminal history but the learned trial Judge, has not examined in totality, as what could be appropriate punishment to her and sentenced the appellant for 15 years' rigorous imprisonment and a fine of Rs. 1 lakh, in case of failure to pay amount of fine, a sentence of rigorous imprisonment for a period of three years to be undergone separately under the judgment and order dated 8th November 2012.

11. The order of acquittal against the four co-accused persons was never a matter of challenge at the instance of the prosecution. The poor illiterate lady preferred an appeal before the High Court against the impugned judgment but the High Court, examining the conviction on merits, took note of the bare facts regarding the compliance of Sections 42, 50 and 55 of the NDPS Act made and since the psychotropic substance was recovered from the residence of the appellant, considered it to be the basis for upholding conviction and sentence of the appellant under the impugned judgment dated 26th February 2018.

12. Neither the trial Court nor the High Court has considered that the lady was illiterate and a senior citizen, was indeed residing but completely unknown to law, with two grown up children, with no previous background of being involved in any kind of criminal cases at any point of time in her life time. The case of the prosecution was that on being received a telephone call, PW-07 Vinay Singh Baghel along with his beat staff reached Village Chikhali and accused appellant, who was residing there, was served a notice and other accused persons were not found at the time of search, the present appellant was taken into custody and against the two coaccused persons against whom there was an allegation that they were involved in the illegal trade and who supplied this psychotropic substance to the appellant, both were charged for offence under Section 27-A of NDPS Act.

13. All the other four co-accused persons were acquitted by the learned trial court under judgment dated 8th November 2012 and held the accused appellant guilty of the offence as she was in possession of the house from where the psychotropic substance was recovered and appeal preferred at her instance came to be dismissed.

14. We are not dilating upon the procedure that was followed in the instant case but after all the five accused persons faced trial, unfortunately the appellant alone was held guilty, and the trial Judge, without examining in totality of the matter and the other salient facts into consideration, sentenced her to 15 years' rigorous imprisonment and a fine of Rs. 1 lakh, in case of default, further imprisonment for a period of 3 years.

15. We have heard learned counsel for the appellant and also the learned counsel for the State who has tried to persuade this Court that looking into the nature of offence which has been committed by the appellant, there should be no leniency in such matters, particularly, when the offence has been proved against her beyond doubt and conviction is upheld by the High Court under Section 20(b)(ii)(C) of the NDPS Act.

16. It may be noticed that the minimum sentence prescribed under the NDPS Act for such offence under Section 20(b)(ii)(C) is 10 years which may extend to 20 years with a fine of Rs. 1 lakh which may extend to Rs. 2 lakhs. While imposing higher than the minimum punishment, such of the factors which are to be taken into consideration have been provided under Section 32B of the NDPS Act but after we have gone through the record with the assistance of the counsel for the parties, we are of the view that the learned trial Judge as well as the High Court have not taken into consideration the factors to be kept in mind for imposing higher than the minimum sentence provided under Section 32B of the NDPS Act.

17. We are of the considered view that the offences under the NDPS Act are very serious in nature and against the society at large and no discretion is to be exercised in favour of such accused who are indulged in such offences under the Act. It is a menace to the society, no leniency should be shown to the accused persons who are found guilty under the NDPS Act. But while upholding the same, this Court cannot be oblivious of the other facts and circumstances as projected in the present case that the old illiterate lady from rural background, who was senior citizen at the time of alleged incident, was residing in that house along with her husband and two grown up children who may be into illegal trade but that the prosecution failed to examine and taking note of the procedural compliance as contemplated under Sections 42, 50 and 55 of the NDPS Act, held the appellant guilty for the reason that she was residing in that house but at the

same time, this fact was completely ignored that the other co-accused were also residing in the same house and what was their trade, and who were those persons who were involved into the illegal trade providing supplies of psychotropic substances, prosecution has never cared to examine.

18. We are not going to examine the question any further but taking in totality of the matter and the background facts which have come on record that she was an illiterate senior citizen on the date of the incident, i.e., 15th January 2011, having no criminal record, and was from the rural background, completely unknown to the law and unaware of what was happening surrounding her, all these incidental facts have not been considered by the learned trial Court while awarding sentence to the appellant.

19. In the given facts and circumstances, while upholding conviction of the appellant, and considering the old age of the accused appellant, who is a poor illiterate lady completely unaware of the consequences, we consider it appropriate that the sentence of the accused appellant be reduced to 12 years' rigorous imprisonment and a fine of Rs. 1 lakh and in default, to further undergo rigorous imprisonment of six months which shall meet the ends of justice. Ordered accordingly.

20. Consequently, the appeal with the aforesaid modifications stands disposed of.

21. Pending application(s), if any, shall stand disposed of.

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