

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 700 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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SONUKUMAR DADULPRASAD KURMI

Versus

STATE OF GUJARAT  
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Appearance:

1. Criminal Appeal No. 700 of 2001  
MR PRAVIN GONDALIYA for Petitioner No. 1  
PUBLIC PROSECUTOR for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 31/01/2003

ORAL JUDGEMENT

This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging the judgment and conviction order, dated 27th

June, 2001 in Sessions Case No. 98 of 2000 recorded by the learned Additional Sessions Judge at Rajkot, finding the appellant guilty for an offence punishable under Section 20(b)(1) of the Narcotics Drugs and Psychotropic Substances Act, 1985, (for short, "NDPS" Act) and sentencing him to suffer RI for three years. The learned Judge also directed him to pay fine of Rs.25000/- (Twenty five thousand only) and in default of payment of fine the appellant was directed to undergo further RI for three months.

2. It was alleged against the appellant that he was found in possession of 300 grams of "Ganja" on 28th March, 2000 at about 11.00 PM at Rajkot Railway Station platform. Appropriate process was undertaken and the muddammal article was recovered from him, in presence of panchas. The samples were sent for analysis. As per the report of the Chemical Examiner, the article recovered was "Ganja". Thereafter, chargesheet was filed and the case was registered as Sessions Case No. 98 of 2000 before the trial court. The appellant was provided with copies of police papers. Charge was framed. The appellant pleaded not guilty to the said charge and therefore, evidence was recorded. Further statement of the appellant was recorded under Section 313 of the said "Code" and after hearing the arguments, the trial court found that the prosecution had proved that the appellant was found in possession of 300 grams of Ganja, without pass or permit and thereby committed the aforesaid offence. After hearing the appellant on the quantum of punishment, the learned Judge inflicted the aforesaid punishment on the appellant.

3. Feeling aggrieved by the said judgment and conviction order, the appellant has preferred this appeal before this court. It has been mainly contended here that the trial court has committed error in holding that the appellant is guilty for the said offence. It has also been contended that proper procedure was not followed, for collection of samples, for examination of the same, that the trial court has overlooked the provision of law for the quantum of punishment awardable for an offence in question. That, therefore, the judgment and conviction order of the trial court are illegal and erroneous and deserve to be set aside.

4. The appellant, therefore, prays that the appeal be allowed, the judgment and conviction order of the trial court be set aside and the appellant be set at liberty forthwith, finding him not guilty for the aforesaid offence. In the alternative, reduction in

punishment has also been prayed.

5. The appeal was admitted and was placed for final hearing. At the hearing today, Mr. P S Gondalia has argued the matter on behalf of the appellant and Ms. Nandini Joshi, learned APP appeared on behalf of respondent State, defended the case. During the course of hearing, the learned advocate for the appellant has contended that the investigating Police Officer has not carried out appropriate procedure for collecting the sample and for sealing the same. He has taken me through the evidence of the I.O. and considering the evidence of panch witness as well as of the I.O. on record, it is amply clear that the procedure required to be followed, had actually been followed by the said Police Officer and no infringement is proved to have been committed by him, in the process of collection of samples. Same way, even for the examination of the sample, no infringement is proved to have been committed in the office of the Chemical Examiner.

6. Therefore, it cannot be said that there was some procedural lapse on the part of the I.O. or on the part of the Chemical Examiner. It is then been contended that the punishment inflicted by the Court is contrary to the law. For this purpose, the learned advocate for the appellant has drawn my attention to the provisions made in Section 20 of the said Act. The amended part of the said Act is required to be considered here, and therefore, it would be worthwhile to reproduce the provision made in Section 20 of the said Act.

"Section 20 : Punishment for contravention in relations to cannabis plant and cannabis. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses sells,  
purchases, transports, imports  
inter-State, exports inter-State or  
uses cannabis, shall be punishable

[(i) where such contravention relates to  
clause (a) with rigorous imprisonment for a term which  
may extend to ten years, and shall also be liable to fine  
which may extend to one lakh rupees; and

(ii) where such contravention relates to  
sub-clause (b),-

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees;

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]

7. It is not in dispute, so far the quantum of punishment is concerned, even 1 kg of ganja is considered to be a small quantity. Here the quantity recovered is 300 grams, and therefore, the appellant was found in possession of small quantity of ganja, even according to the case of the prosecution. In that view of the matter, the provision made in sub-clause (b)(11)A, of Section 20, of the Act, will come into play. According to this provision, the appellant can be sentenced to six months RI and fine of Rs.10000/- (Ten thousand). This is the maximum which the Court can do in the present case.

8. It is found that the trial court has not considered this amended part of the said provision and has inflicted punishment for a period of three years and the appellant has also been directed to pay fine of Rs.25000/- (Twenty five thousand).

9. The approach of the court below, clearly suggests that the provision of the amended part of Section 20 of the said Act was not brought to the notice of the trial court and therefore, the above mistake appears to have remained on record.

10. It is, therefore, clear that the appellant could

not be sentenced for more than six months and fine could not be imposed for more than Rs.10000/- (Ten thousand only). In that view of the matter, the trial court has committed error in so far the quantum of punishment is concerned and therefore, it is necessary for this Court to interfere into the judgment and conviction order of the trial court, with respect to the quantum of punishment.

11. For the foregoing reasons, this appeal is partly allowed. The judgment and conviction order recorded by the trial court are confirmed, so far the conviction is concerned.

12. So far the quantum of punishment is concerned, the appellant is directed to undergo RI for six months. He is also directed to pay fine of Rs.10000/- (ten thousand only) and in default of payment of fine, he is directed to suffer further RI for one month. The order of sentence and fine imposed by the trial court is modified by the above order.

13. Naturally, the period undergone by the appellant, by now, will be set off by the above order. As soon as the period undergone is sufficient, the appellant will be required to be set at liberty, if no longer required in any other case. The appeal is allowed to the above extend.

(D. P. Buch, J.)

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