

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1210 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)

Versus

VALJIBHAI HANJABHAI RANT - Opponent(s)

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Appearance :

Ms. D.S. Pandit Addl. PUBLIC PROSECUTOR for Appellant(s) : 1,
MR JV JAPEE for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 30/03/2007

ORAL JUDGMENT

1. Heard Ms. Darshana Pandit for the appellant-State and Mr. Japee for the opponent accused.

2. The appellants State of Gujarat has preferred this appeal under section 377 of the Criminal

Procedure Code 1973 for enhancement of sentence imposed by learned Special Judge, and Addl. Sessions Judge (Fast Track Court) Modasa in Special (NDPS) Case No. 4 of 2003 vide order dated 22.4.04.

3. I have heard learned APP for the appellant-State and Mr. J.V Japee for the accused.

4. In response to the query raised by the Court Mr. Japee has confirmed, accepted and informed the Court that the respondent accused has neither challenged the order of conviction and sentence nor the respondent intends to challenge the validity and legality of the order of conviction recorded by the learned trial judge. So while dealing with the present appeal the Court shall have to concentrate on the aspects pointed by learned APP on the adequacy of the sentence imposed at the conclusion of the trial.

5.1. Learned APP Ms. Pandit has taken me through the grounds of challenge and the nature of the order of conviction and sentence attached with the memo of appeal. The accused has been guilty of the charges of offence punishable under the Narcotic Drugs Psychotropic Substance Act hereinafter referred to as (NDPS) Act.

5.2 As the respondent accused was found in conscious physical possession on 18.7.03 within the limits of Modasa town of district Sabarkantha with

prohibited substance 'Canabis plant popularly known as 'ganja'. The respondent accused was found with 1.9 kg (i.e 1 kg 900 grams) of ganja when he was intercepted on information received by local police.

6. The learned trial judge after recording conviction had accorded the opportunity of hearing to the accused as well as the public prosecutor appearing before the trial court on the point of sentence. After hearing both the sides the learned trial judge decided to impose one year rigorous imprisonment and a fine of Rs 5000/- to the accused. According to the State this punishment is inadequate especially when the Presiding Officer is authorised to impose punishment upto ten years and a fine to the extent of one lakh.

7.1 Plain reading of the operative order wherein the learned trial judge has assigned the reasons for deciding the quantum of punishment gives clear impression that he has applied mind from all relevant angle. It would not be legal for the Court while imposing punishment to consider only the maximum punishment prescribed under a particular provision or for the offending act. Determination of quantum of sentence is within the domain/ jurisdiction of trial court and several aspects are relevant determining adequacy of punishment.

7.2 This incident is of 18.7.03 and as per the

scheme of the NDPS Act anybody found in conscious possession of prohibited substance "ganja" upto 1 kg can be said to be a person having such prohibited substance in small quantity and for that independent provision qua punishment is prescribed under the NDPS Act. For each prohibited psychotropic substance or narcotic drugs the legislature has decided the quantity at the time of classifying them mainly two different categories i.e small quantity and commercial quantity. Difference in between weight wise would therefore carve out third category i.e greater than small but lesser than commercial. The commercial quantity of ganja is prescribed (serial No. 55 of the schedule) as 20 kg. So conscious possession of ganja of 20 kg or more if found then it can be said that the person is dealing in the prohibited substance ganja in a commercial way. He may be trafficker or gross purchaser or cultivator or supplier to the persons indulging in selling and distributing that substance, here the ultimate quantity found is 1 Kg and 900 grams i.e greater than but lesser than commercial which may be punishable under section 20 (b) (ii) of the NDPS act.

8. It is rightly argued by Mr. Japee that the quantity found from the accused was little more than the small quantity and percentage wise there is a big difference percentage wise between quantity found from the accused and the prescribed commercial quantity.

9. Learned trial judge has also considered the socio-economic background of the accused. The appellant State has narrated the case of the prosecution in brief. The case of the prosecution in para 2 of the memo appeal, relevant part is reproduced here for convenience :

" The prosecution case in brief is that on 18.7.03, the complainant P.B Patel of Modasa Town Police station along with his staff was on the duty of blocking the road for the purpose of octroi near octroi Naka, Modasa Meghraj road. At that time, he received information to the effect that the accused was to come on foot towards Meghraj road with ganja. Thereupon, the complainant called two panchas and kept a watch. That by that time, the accused came as per the information and therefore, he was apprehended. Thereafter, the complainant introduced himself as Police Inspector. The police wanted to search the person of the accused and therefore, he was asked whether he wanted to be searched in presence of a Gazetted officer. The accused showed his willingness to be searched by the police in presence of the complainant. Thereafter, the search was carried out and on search they found the accused possessing green coloured branches of Cannabis and on weighing the same, the weight was found to be 1 kg and 900 gm. The accused was not having any pass or permit to possess the said cannabis. Thereafter the panchnama was drawn and the muddamal was seized and sent to the Forensic Science Laboratory and on the report fo the Forensic Sience Laboratory that the seized quantity was Cannabis."

10.1 It is also contended that the version of the prosecution witness has not been examined as

they are. But on this count the learned trial judge cannot be said to have committed any illegality in deciding the quantum of punishment. It emerges that the accused was a carrier for somebody who had sent prohibited substance ganja for use of one sadhu. Ultimately it was the first offence for the accused and when the Court is aware or conscious of one fact that the financial capacity of the accused is very limited then imposition of fine of higher amount would not serve the real purpose. The offence found proved is not qua property or affecting economy of society or country. By such orders the accused can be kept behind bar for some long period on account of incapability. As a defaulter the accused shall have to go through the period of imprisonment imposed or in default punishment.

10.2 The trial court was also supposed to consider the social background of the accused. It is the say of the prosecution that the accused is tribal and the muddamal recovered was in a raw form and so it is difficult for the Court to say that the trial court has grossly erred in considering the period of substantive punishment or deciding the quantum of amount of fine. Ultimately passing of the order of punishment is a matter of discretion with the trial judge especially no minimum period of sentence as punishment is prescribed. It is not the case of the State that the learned trial judge has awarded punishment less than minimum prescribed. In the facts and circumstance of the present case if no

illegality is found from the order a discretionary order should not be disturbed. It is true that the offences under NDPS Act should be dealt with utmost sensitivity and when a person is found guilty then no leniency should be shown, and no accused should be permitted to take advantage to misplace sympathy. However in the present case no such situation is emerging and on the contrary the learned trial judge has assigned good reasons for deciding quantum of punishment imposed. I do not find any merit in the appeal and therefore the same is dismissed.

11. In the result, this application is dismissed. No enhancement in sentence imposed by learned Special Judge, and Addl. Sessions Judge (Fast Track Court) Modasa in Special (NDPS) Case No. 4 of 2003 vide order dated 22.4.04 is required.

(C.K. Buch,J)

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