

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRLA. 703-4/2005

Date of order : 30th April, 2008

1. Vinod Kumar
S/o Sh. Darshan Lal Luthra,
R/o H. No. 90, Gate No. 3, New Aman Nagar,
Near Jullundhar Bye Pass,
Ludhiana, Punjab Appellant No.1.
! Through: Ms. Purnima Sethi, Advocate.

2. Jaspal Singh @ Jassa,
S/o Sh. Gurbachan Singh,
R/o Village Kumraha, Tehsil Ajnala,
P.O. Ram Dass, Distt. Amritsar,
Punjab Appellant No.2.

Through: Mr. Harjinder Singh, Senior Advocate with
Mr. Y.K. Saxena, Advocate.

versus

Sh. S.K. Srivastava,
Intelligence Officer,
Directorate of Revenue Intelligence,
New Delhi. Respondent
Through: Mr. Satish Aggarwala with
Ms. Pooja Bhaskar, Advocate.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER

Dr. S. Muralidhar, J. (open court)

1.1 These appeals are directed against the judgment dated 5th July, 2005
passed by the Special Judge, NDPS, New Delhi in SC No. 5 of 1997

convicting the Appellant No.1, Mr. Vinod Kumar and the Appellant No.2,

Mr. Jaspal Singh for the offences under Sections 21/23/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS'). It is also directed against the order dated 8th July, 2005 whereby the learned Special Judge sentenced both the appellants to undergo rigorous imprisonment of twenty years and fine of Rs. 2,00,000/- each under Section 21 and 23 of NDPS Act and in default of payment of fine to further undergo rigorous imprisonment for one year. They were also awarded rigorous imprisonment for ten years and to pay fine of Rs. 1,00,000/- each under Section 29 NDPS Act and in default to undergo rigorous imprisonment for six months. These sentences were directed to run concurrently.

1.2 By the same impugned judgment accused No.3 Manoj Kumar was also convicted for the offence under Section 29 NDPS Act and sentenced by the order dated 8th July, 2005 to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,00,000/- and in default to further undergo rigorous imprisonment. However, the Criminal Appeal No. 702 of 2005 is not on Board today.

2. As far as the present two appeals are concerned, on 28th September 2007 it was stated by learned counsel for both the Appellants that if the Court would consider modifying the sentence awarded by the trial court to that already undergone by each of the accused, then they would not press for hearing of the appeals on merits. This submission was made in view of the fact that by that date, the Appellants had already served over ten years of the sentence.

3. It is stated that as of today each of the Appellants has already served

over eleven years and three months of the sentence. It is again submitted by Mr. Harjinder Singh, the learned senior counsel appearing for the Appellant No.2 and Ms. Poornima Sethi, the learned counsel appearing for the Appellant No.1 that they would not press for the hearing of their respective appeals on merits provided that the sentence awarded by the trial court to each of the Appellant be modified to the sentence already undergone by each of them.

4. The case of the prosecution is that two trucks bearing No. HR-29A-0705 and DL-1GA-9499 were intercepted on 1st February, 1997 at about 2:30 a.m. at the Delhi Haryana Border, Suraj Kund towards Delhi. The occupants of truck DL-1GA-9499 were Vinod Kumar and Jaspal Singh. The latter was driving the truck. The driver of the other truck HR-29A-0705 was Manoj Kumar who was its sole occupant. Thirty-four packets were recovered a secret cavity from the truck No. DL-1GA-9499. Thirty-five packets were likewise recovered from the other truck. Both sets of packets were found to contain white or light brown powder having pungent smell. All the sixty nine packets tested positive for heroin. The gross weight of all the sixty nine packets was found to be 69.254 Kgs. The net weight was 65.765 Kgs.

5. One of the accused Jagdish Chander who was stated to be the owner of the truck No. HR-29A -0705, was acquitted by the trial court. The driver of that truck Manoj Kumar was sentenced to 10 years' RI under Section 29 NDPS Act. However, the Appellants who were occupants of truck no. DL-1GA-9499, were sentenced to undergo twenty years' rigorous imprisonment

each for being found guilty under Sections 21/23 / 29 NDPS Act, 1985.

6. The factors that appear to have weighed with the trial court, as is evident from the order dated 8th July 2005 was that a huge quantity of 69.254 Kg. of heroin was recovered from the appellants and that it would not be sufficient to award the minimum sentence. On the other hand, it is pointed out by the learned counsel for the Appellants that as regards truck bearing No. HR-29A-0705, thirty five packets were recovered therefrom. It was the aggregate weight of the thirty five packets recovered from the said trucks and the thirty-four packets from the truck occupied by the Appellants that was found to be 69.254 kgs. (gross weight) which is approximately one kilogram per packet. Therefore, as far as the truck which was occupied by the Appellants, the total quantity recovered would come to around thirty four kilograms. As per the report of the Central Revenue Laboratory dated 27th May 1997 the purity percentage of the ten samples sent for testing weighing from 45.70% to 81.5%.

7. It is submitted that there is no evidence to indicate any difference in the role of each of the accused. While Shri Vinod Kumar was the occupant, Shri Jaspal Singh was the driver of the truck. Shri Manoj Kumar the driver of the other truck was awarded ten year's. It is submitted that there is no evidence that Shri Vinod Kumar, was the owner of the truck in which he was found. It is further submitted that none of the Appellants has any previous conviction.

8. Reliance is placed on the judgment in *Balwinder Singh v. Assistant*

Commissioner, Custom and Central Excise AIR 2005 SC 2917 where the recovery was of 175 Kg of heroin and 39 Kg. of opium and the Appellant was the driver of the vehicle from where the narcotics substance was recovered. In those circumstances, the Supreme Court reduced the sentence from fourteen years awarded by the trial court to ten years. Reliance is also placed upon the judgment in *M. Prabhulal v. Asst. Director DRI 2003 [3] JCC 161* where the quantity was recovered 66 Kg. of heroin. The Appellant was sentenced to undergo RI for ten years and to pay a fine of Rs. One lakh. As far as the orders of this Court are concerned, learned Senior counsel for the Appellants relied upon the order dated 26th March, 2007 passed in CrI .Appeal No. 124 of 2005 (*Ali Ebadollahi v. State (NCT of Delhi)*), order dated 12th October 2007 passed in Criminal Appeal No. 407 of 2003 (*Wu Yen La v. Narcotics Control Bureau*) and order dated 7th December 2007 passed in Criminal Appeal Nos. 376-77 of 2006 (*Henry Chika Onyekachi v. C.L. Meena, Inspector Customs Export*) where in similar circumstances the sentence was reduced to the period already undergone.

9. The learned counsel for the Respondent does not dispute the fact that the quantity recovered from the truck occupied by the two Appellants here was around 35 Kg. She is also unable to dispute that the judgments of Supreme Court and this High Court have, in similar circumstances, reduced the sentence to the period already undergone while imposing a fine of Rs.One lakh. It is further not disputed that each of the Appellants had already undergone a sentence of over eleven years and three months.

10. Keeping in view the above judgments of the Supreme Court and this

Court and the fact that the Appellants have already undergone the sentence of over eleven years and three months, it is directed, while upholding the conviction of the Appellants under Sections 21/23/29 NDPS Act by the impugned judgment dated 5th July 2005, the order dated 8th July 2005 passed by the learned trial court awarding the sentence is modified and reduced to the period already undergone by each of the Appellants. The fine amount of Rs. Two lakhs under Section 21/23 NDPS Act and Rs.1 lakh under Section 29 NDPS Act is substituted by a fine of Rs.1 lakh and in default of payment of fine, the Appellants to further undergo RI for three months.

11. It is, therefore, made clear that except to the extent of the modification in the sentence awarded to each of the Appellants by the trial court, the conviction awarded to them by the trial court is sustained. Upon payment of the amount of fine or on completion of the default sentence as the case may be, the trial court shall direct the release of the Appellants unless wanted in some other case.

12. The appeals are accordingly disposed of.

13. A certified copy of this order will be sent to the Superintendent, Central Jail, Tihar, Delhi immediately.

14. The trial court record be sent back immediately. Order dasti to the counsel for the parties.

S. MURALIDHAR, J

APRIL 30, 2008

Sb/rk