

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 1222 / 2017

State of Rajasthan

----Appellant

Versus

Oparam Son of Bhabhuta Ram Vishnoi, Resident of Bhudhnagar,
Dailkada, P.S. Dangiyawas, District Jodhpur (Raj.).

----Respondent

For Appellant(s) : Mr.SK Vyas, GA.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment / Order

31/10/2017

Heard.

By way this appeal preferred under Section 377 Cr.P.C. the State of Rajasthan has approached this Court being aggrieved of the judgment dated 9.3.2017 passed by the learned Special Judge, NDPS Act Cases No.2, Chittorgarh Camp Nimbaheda in Sessions Case No.59/2014 (15/2010) whereby, the respondent Oparam was convicted and sentenced as below :-

8/15 of the NDPS Act	7 years' RI and a fine of Rs.70,000/-, in default of 1 year's RI.
8/18 of the NDPS Act	3 years' RI and a fine of Rs.30,000/-, in default of 3 months' RI.
8/25 of the NDPS Act	7 years' RI and a fine of Rs.70,000/-, in default of 1 year's RI.

All the sentences were directed to run concurrently.

The appeal is delayed by 46 days and no application has been moved on behalf of the appellant State for condonation of

delay in filing the appeal.

I have heard the arguments of learned P.P. on merits and have perused the impugned judgment and the record.

Facts in brief are that Virendra Singh, S.H.O., P.S. Bhadesar received information regarding transit of huge quantity of narcotics in a Mahindra Pickup vehicle bearing registration no.RJ 19 GA 4928 from Banda T Roads towards Jodhpur. After following the procedure prescribed under Section 42(2) of the NDPS Act, the S.H.O. laid a nakabandi at Banda T Roads. The suspected pickup vehicle was seen coming towards the police party. The driver stopped the vehicle at about 50 meters from the nakabandi and 3 persons got down therefrom ran away in different directions. The police party apprehended one of the accused and presented him before the S.H.O. The apprehended accused identified himself to be Oparam. He gave out the names of escaped occupants of the vehicle as Bhanwarlal and Baluram. After observing all the formalities as per the NDPS Act, the vehicle was searched and it was found that 24 gunny bags, the gross weight thereof was 514 kgs. were stored therein. Each gunny bag was containing poppy straw. The gunny bags were opened and emptied on a tarpaulin and 2 samples of 500 gms. each were taken therefrom. A plastic bag containing opium was also recovered from the driver side gate of the vehicle, the weight whereof came to be 1 kg. 2 samples of 30 gms. each were taken out from the contraband opium. Sampling procedure was followed and thereafter, the documents of seizure etc. were prepared. FIR No.145/2009 was lodged at P.S. Bhadesar for the offences under

Sections 8/15 & 18 of the NDPS Act and investigation commenced. Charge-sheet was filed against the respondent Oparam under Sections 8/15, 18 and 25 of the NDPS Act and investigation was kept pending against the remaining accused. The other accused were arrested later on and a subsequent charge-sheet was filed against them. At the trial, the prosecution could not produce the entire seized and exhibited contraband opium and poppy straw and, therefore, relying upon various judgments of Hon'ble Supreme Court as well as of this Court, the trial Court came to the conclusion that the prosecution could only prove the recovery equalling the weight of samples taken out from the contraband poppy straw and opium by leading the primary evidence of seizure and concluded that the prosecution proved recovery of 24 kgs. of poppy straw and 60 grams of opium. The pickup vehicle was held to be in the ownership and dominion of accused Oparam and accordingly, he was convicted and sentenced as above.

The State of Rajasthan has approached this Court by way of this appeal under Section 377 Cr.P.C. seeking enhancement of the sentences awarded to the appellant.

Having appreciated the arguments advanced by the learned Public Prosecutor and after going through the impugned judgment as well as record, this Court is in firm agreement with the findings recorded by the trial court in the impugned judgment and is duly satisfied with the quantum of sentences awarded to the accused respondent. As has been stated above, the prosecution failed to lead primary evidence of the total seized contraband and hence, recovery of minor quantities of 12 kgs. of poppy straw and 60

gms. of opium (by weight of samples) was held to be proved by the trial Court in light of the various judicial pronouncements. In view of these facts, this Court is of the opinion that the sentences awarded by the trial court to the respondent Oparam cannot be treated to be inadequate or insufficient by any stretch of imagination. In this background, I find no reason warranting enhancement of sentences awarded to the accused respondent Oparam.

Resultantly, the instant appeal seeking enhancement of the sentences awarded to the respondent Oparam vide judgment dated 9.3.2017 passed by the learned Special Judge, NDPS Act Cases No.2, Chittorgarh is dismissed on the ground of being delayed and so also on merits.

(SANDEEP MEHTA),J.

S.Phophaliya/-

