

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

S.B. Criminal Appeal No. 780 / 2015

State of Rajasthan.

----Appellant

Versus

Raju @ Nathi S/o. Mushi Ram, B/c. Oad Rajput, R/o. Ward No.19,
Saraswati Colony, Sangariya, District – Hanumangarh.

----Respondent

For Appellant(s) : Mr. S.K. Vyas, AAG with
Mr. Vishnu Kachhwaha, PP.

For Respondent(s) : Mr. Govind Suthar, Amicus Curiae.

HON'BLE MR. JUSTICE ARUN BHANSALI

Judgment

23/09/2017

This State appeal under Section 377 Cr.P.C. is directed against the judgment dated 08.07.2015 passed by the Special Judge (NDPS Cases), Hanumangarh ('the trial court') in Session Case No.24/2009, whereby while convicting the respondent-accused for offence under Section 3/21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act'), the accused has been awarded sentence of 3 months' rigorous imprisonment and Rs.500/- as fine.

The brief facts of the case are that on 04.07.2009, SHO, PS Sangariya apprehended the respondent and recovered 17 grams of smack from his possession. After undertaking procedure, the challan was filed against the accused and on 06.10.2008, he was charged with offences under Section 8/21 of the Act, which he denied and claimed trial.

The prosecution produced three witnesses and exhibited eight documents. When the statement of accused under Section 313 Cr.P.C. was recorded, he accepted having committed the offence and prayed for early disposal of the case on account of his physical condition.

The trial court after hearing the parties, came to the conclusion that the respondent-accused was guilty of offence under Section 8/21(b) of the Act. While awarding sentence, the trial court noticed that it was the first offence of the accused, there was no history of any grievous conviction and looking to his physical condition, sentenced him to 3 months' rigorous imprisonment and imposed fine of Rs.500/-. It was further ordered that in default of payment of fine, he would further undergo imprisonment for 5 more days.

Alleging the sentence awarded as inadequate, the present appeal has been filed, which was admitted on 18.08.2015 and the respondent-accused was summoned through bailable warrant and when despite service of bailable warrant, the accused did not appear, he was summoned through non-bailable warrant, which was received back with the report that the respondent-accused was bedridden.

The SHO, PS Sangariya was directed to visit the respondent and make an inquiry and give a detailed report of his illness.

The SHO pursuant to the directions of this Court, has submitted his report to the effect that the respondent was bedridden and is not in a position to move and the financial

condition of the family was very poor. In view of the said report, the warrant of arrest was recalled.

It is submitted by learned public prosecutor that the trial court committed error in awarding lesser sentence to the accused though he was found guilty of the offence under Section 8/21(b) of the Act. The reasons indicated by the trial court are not sufficient and, therefore, the sentence imposed by the trial court be enhanced.

Learned amicus curiae submitted that the trial court has recorded sufficient reasons for awarding sentence to the respondent-accused and, therefore, the sentence does not call for any enhancement. It was submitted that though initially the respondent denied the charge and claimed trial, at the time of his statement under Section 313 Cr.P.C., he has admitted the charge as on account of his physical condition, he wanted disposal of the proceedings expeditiously. Further submissions were made that from the report submitted by the SHO, it is apparent that the respondent has suffered fracture of his spinal cord and is totally confined to bed and, therefore, in those circumstances also, the appeal deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is well settled that quantum of sentence can be interfered with when failure to impose proper sentence results in miscarriage of justice and the sentence is manifestly inadequate or unduly lenient in a particular case.

The trial court while awarding sentence has specifically given out the reasons that the present was the first offence of the accused, there was no previous conviction, he had confessed to the offence and that he was suffering from serious disease and, consequently, awarded the sentence. The report, which was received from the SHO under the directions of this Court indicates that the respondent is suffering from fracture in the spinal cord and is confined to bed. The SHO has further reported that even for going to bathroom, he requires support and cannot move around.

In view of the above circumstances, the reasons recorded by the trial court for awarding the sentence, cannot be said to be not germane and in peculiar facts of the case the sentence also cannot be said to be inadequate so as to require interference in the present appeal.

In view of the facts and circumstances noticed hereinbefore, no case for enhancement of sentence is made out. There is no substance in the appeal, the same is, therefore, dismissed.

(ARUN BHANSALI)J.