

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Criminal Appeal No. 225 of 2006

Smt. Shanti Devi

...Appellant

Vs.

State of Uttaranchal

...Respondent

Mr. Ramji Srivastava, Advocate for the appellant.

Mr. Atul Kumar Sah, Deputy Advocate General along with Mr. Ranjan Ghildiyal, AGA for the State.

Dated: 31st August, 2020

Hon'ble N.S. Dhanik, J.

This criminal appeal is preferred against the judgment and order dated 09.10.2006 passed by learned Additional Sessions Judge/Special Judge, NDPS Act, Dehradun in Special Sessions Trial No. 05 of 2002. By the said judgment and order dated 09.10.2006, the appellant has been convicted for the offence punishable under Section 8/21 of NDPS Act and was sentenced to undergo two years rigorous imprisonment along with a fine of Rs. 15,000/-.

2. Brief facts of the case are that, on 21.10.1999, the complainant, along with other police officials, proceeded from the Police Station for the purpose of recovery of illegal *smack* and *charas*. They stopped the gypsy before ten footsteps from the lane of Gurcharan's (husband of the accused) house for the purpose of collecting evidence from the general public, but none came forward for the same. Thereafter, they searched each other and on being satisfied that none of them was having any

illegal contraband, they went to the lane of Gurcharan's house. There, a lady came out holding a child in her lap, and went back after seeing the police personnel. On having doubt, the lady constables apprehended Smt. Shanti on the door of the house and on asking her name and address, she disclosed her name as Shanti Devi. She was told that they are having information that she is in possession of illegal *charas* and *smack* and asked her whether she wants to be searched before a Gazetted Officer. Then, on giving consent by her, constable Karan Singh was sent to call the Circle Officer. Thereafter, in the presence of the Circle Officer, the lady constable searched Smt. Shanti Devi. On search, illegal *smack* was recovered in a white plastic bag from inside her blouse. Thereafter, the recovered smack was weighed and its weight was 11.8 grams. After following the procedure contemplated under the NDPS Act , the same was seized.

3. After investigation, the Investigating Officer filed charge sheet against the accused appellant. Based on the same, charges were framed and the Court below has convicted the appellant for the aforementioned offence.

4. Learned counsel for the appellant does not press this appeal on merits. He submits his arguments only on the quantum of sentence. Since the appellant's counsel does not challenge the conviction, this Court need not go into the merits of the case and, accordingly, the conviction of the appellant, as ordered under Section 8/21 of NDPS Act is maintained.

5. Learned counsel for the appellant submits that the appellant is a lady aged about 52 years and the occurrence relates back to year 2006. He submits that the appellant has already served around two months in the jail and prays that the

substantive sentence, awarded to the appellant, may be reduced to the period already undergone by her. Learned counsel placed reliance on Section 21(b) of the NDPS Act which reads as follows:-

“21(b) where the contravention 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.”

6. On the other hand, learned Deputy Advocate General opposed the submission made by learned counsel for the appellant. It is submitted that 11.8 gram smack was recovered from the possession of the appellant. It is also submitted that there is neither any occasion to interfere with the sentence awarded to the appellant, nor is any sympathy called for in the instant case.

7. Since the appellant has already served one month twenty seven days imprisonment, and also considering the nature of the case, I am of the considered view that this much of sentence, as served out by the applicant, is sufficient to serve the purpose.

8. Considering the submissions of learned counsel for the parties and the fact that the appellant is a lady aged about 52 years, this Court is of the view that the ends of justice would be sub-served, if the jail sentence of the appellant is reduced to the period already undergone by her. Consequently, the appeal is dismissed on merit. However, it is partly allowed on the quantum of sentence and the sentence is reduced to the period already undergone by the appellant. The sentence of fine is enhanced from 15,000/- to Rs. 30,000/-. The enhanced amount of fine shall be deposited before the trial Court. If the appellant fails to deposit the enhanced amount of fine within

two months from today, she shall serve the one year imprisonment in addition. The impugned judgment and order stands modified to the extent indicated above.

9. Let a copy of this judgment and order along with the LCR be sent back to the Court concerned for doing the needful at the earliest.

(N.S. Dhanik, J.)
31.08.2020

S.B.