

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 361 OF 2009

(@ S.L.P. (Cr1.) NO.8552 of 2008)

Shiv Kumar Mishra

...Appellant

Vs.

State of Goa Through Home Secretary ...Respondent

O R D E R

1. Leave granted.
2. The appellant was convicted under Section 20(b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.30,000/- and in default of such payment to undergo simple imprisonment for three months.

3. On 9th December, 2004, the appellant was found in possession of 1.61 Kgs. of Ganja. Under the provisions of the NDPS Act, 1 Kg. of Ganja has been defined to be "small quantity" and 20 Kgs. and above has been defined as "commercial quantity". When the seized Ganja was analyzed on 15th December, 2004, the weight thereof together with jute bag and plastic carrying bag was found to be 1.595 Kgs. The Ganja alone, without the jute bag and plastic carrying bag, weighed 1.31 Kgs. Before the High Court, it was contended on behalf of the appellant that once the moisture content of the seized Ganja was excluded, the actual weight of the contraband would weigh less than 1 Kg., which would have attracted a punishment of imprisonment for a term which could extend to six months or fine, which could extend to Rs.10,000/-, or with both. It was also submitted that the expression 'Ganja', as defined in Section 2(i)(b) of the NDPS Act, does not include seeds and leaves when not accompanied by the tops. It was also submitted that the expert

(PW.1) Mahesh Kaissare had not been able to specify the weight of the flowery part alone or the leaves separately. It was prayed before the High Court that in the circumstances since the appellant had already undergone two months and six days out of the sentence, the same be considered as the substantive sentence and that the appellant would deposit the fine in case the same has not been deposited.

4. The High Court rejected the submission made on behalf of the appellant, but considering the quantity involved which was little over 1 Kg., reduced the sentence from three years' rigorous imprisonment to one year's rigorous imprisonment. The fine was, however, not reduced.

5. Not being satisfied with the order of the High Court reducing the sentence from three years to one year, the appellant has moved this Court for further relief.

6. In the present appeal, the same submission has been advanced on behalf of the appellant.

7. Learned counsel for the appellant submitted that having regard to the definition of "Ganja" in Section 2(iii)(b) of the NDPS Act, the seeds and leaves ought not to have been included while weighing the seized contraband since the same was not accompanied by tops. It was urged that excluding the seeds and leaves the actual weight of the seized Ganja would be below 1 Kg. which would attract a much lesser punishment of imprisonment for a term which could extend to six months or with fine, which could extend to Rs.10,000/-, or with both.

8. Learned counsel for the appellant submitted that the order of the High Court reducing the period of sentence to one year was erroneous since the seized Ganja would be less than 1 Kg. and could not, therefore, be taken to comprise commercial quantity.

9. Despite several opportunities, the State did not appear to contest the matter and the same was taken up for final disposal in the absence of the State.

10. Section 2(iii)(b) of the NDPS Act defines "Ganja" as follows :-

"'ganja', that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;"

An attempt has been made on behalf of the appellant to convince us that the seized Ganja was not accompanied by flowering or fruiting tops and hence the weight of the seeds and the leaves would have to be excluded on account of the said definition, which would reduce the weight of the seized Ganja considerably so as to exclude it from the definition of commercial quantity and attract a

much lesser sentence than when the seized commodity was treated to be of commercial quantity.

11. The submissions made by learned counsel for the appellant are not convincing since from the evidence on record it has been established that the seized Ganja consisted of a greenish brown colour leafy and flowery parts of the plant (in moist condition) which, in terms of the definition of the expression "Ganja", would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. As far as exclusion of the moisture content of the seized Ganja is concerned, there is nothing in the NDPS Act to suggest that when the weight of a quantity of Ganja is to be ascertained, the moisture content has to be separately ascertained and excluded. On the other hand, we are of the view that the weight of the contraband would be the weight taken at the time of seizure.

12. We, therefore, see no reason to interfere with the judgment and order passed by the High Court and dismiss the appeal accordingly.

J.
(ALTAMAS KABIR)

J.
(CYRIAC JOSEPH)

New Delhi

Dated: 23.2.2009