

□(ITEM NO.101  
(P.H.)

COURT NO.10

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 239 OF 2006

STATE OF MADHYA PRADESH

Appellant (s)

VERSUS

UMESH KUMAR

Respondent(s)

(With appln. for exemption from filing O.T. and office report )

Date: 15/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. SATHASIVAM  
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s) Mr. C.D. Singh,Adv.

For Respondent(s) Mrs.K. Sarada Devi,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed.

[ Usha Bhardwaj ]  
Court Master

[ Savita Sainani ]  
Court Master

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 239 OF 2006

State of Madhya Pradesh

...Appellant(s)

Versus

Umesh Kumar

...Respondent(s)

O R D E R

Aggrieved by the judgment and order of the High  
Court of Madhya Pradesh at Jabalpur dated 23rd February,  
2004 in Criminal Appeal No.449 of 1993, the State of  
Madhya Pradesh has filed the above appeal.

The respondent herein was charged under Section 18  
of the Narcotic Drugs and Psychotropic Substances Act,

1985 (hereinafter referred to as the "Act"). The Special Court on consideration of the entire materials and after finding that the respondent is guilty of the offence punishable under Section 18 of the Act, sentenced him to undergo Rigorous Imprisonment for 10 years with a fine of Rs. 1 lakh and in default of payment of fine, he was ordered to undergo R.I. for a period of one year.

The conviction and sentence was challenged by the accused by way of an appeal before the High Court of Madhya Pradesh in Criminal Appeal No.449 of 1993. The

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appeal was heard by the learned Single Judge of the High Court on 23rd February, 2004. The judgment contains only three paragraphs out of which the first paragraph relates to narration of offence and the ultimate decision of the Special Court imposing sentence of 10 years R.I. The third and the last paragraph relates to modification of the sentence. The only paragraph remains to be seen is paragraph No.2 wherein the High Court without adverting to the case of the prosecution and the defence straightaway discussed about the sentence, the period of custody of the accused and his avocation. Based on the same, while confirming the conviction awarded by the Special Court, the High Court reduced the sentence to the period already undergone which is nine months and also reduced the sentence of fine to the extent of Rs.2,000/- instead of Rs.1 lakh as ordered by the Special Court.

We heard learned counsel for the State as well as for the respondent-accused. It is not in dispute that Criminal Appeal under Section 374 of the Criminal Procedure Code, 1973, was filed before the High Court by the accused-appellant therein. In such circumstances, it

is but proper for the High Court to go into the merits, particularly, the materials placed by the prosecution in support of its charge and the decision arrived at by the

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Special Court awarding sentence of R.I. for 10 years. It is unfortunate that the learned Single Judge without any discussion on merits about conviction, but by referring his illiteracy and finding that he had served nearly nine months' sentence, reduced the sentence to the period already undergone. We are unable to accept the course adopted by the High Court.

Therefore, without expressing anything on the merits, we set aside the impugned judgment of High Court and remit the same to it for fresh disposal. We request the High Court to restore the appeal on its file and go into the merits of the case and decide afresh in accordance with law as expeditiously as possible.

The criminal appeal is allowed accordingly.

.....J.  
(P. SATHASIVAM)

.....J.  
(ANIL R. DAVE)

New Delhi,  
Dated: July 15, 2010.