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Crl.A.No. 1334 OF 2002
ITEM NO. 102COURT NO.11 SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 1334 OF 2002

Basheer @ N.P. Basheer

...
APPELLANT (S)

VERSUS

State of Kerala

...
RESPONDENT (S)

(With appln. For urging addl grounds and bail)
WITH CRL.A.No.1335-1337/2002 (With appln. For bail, urging addl.
Grounds and with O.R.)

Date: 22/
07/2003
This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)M/s. T.N. Singh, S.N. Singh & V.K. Singh,Adv.

For Respondent (s)Mr. John Mathew,Adv. For
Mr. K.R. Sasiprabhu,Adv.

Mr. Ramesh Babu M.R.,Adv.

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

CRL.A.No. 1337/2002:

When hearing of these appeals was taken up, learned counsel appearing on behalf of the appellant, at the outset, submitted that amendment has been made in Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by Narcotic Drugs and Psychotropic Substances (Amendment) Act 2001 (Act 9 of 2001) whereby Section 21 of the Principal Act has been substituted and lesser punishment has prescribed. Counsel submitted that the amended provision shall apply in the case in hand and in view of the small quantity seized from possession of the accused, the maximum sentence that could have been awarded was six months.

Section 41(1) and sub-section (2) of Section 1 of the amending Act read thus:

"Sec.41 (1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the Courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence. Provided that nothing in this section shall apply to cases pending in appeal."

It appears that as the matter in relation to the appellant was pending in appeal by virtue of the proviso aforesaid, prima facie, the amended provision shall have no application to the ins

tant case. Learned counsel submitted that a distinction has been made for applicability of the amended provision as according to Section 41 the same shall apply in relation to those cases alone, which were pending either under investigation or before the Trial Court and under the proviso cases which were pending in appeal on the date of coming into force of the Amending Act shall have no application. It has been submitted that the proviso being discriminatory is violative of equality clause enshrined under Article 14 of the Constitution of India. Though this point not raised before the High Court, but has been raised in the present case specifically in ground No. IV(b). As constitutional validity of the proviso has been challenged, we feel it would be expedient to permit the appellant to implead Union of India as respondent in these appeals, which is accorded.

Issue Notice to the Union of India.

Let a copy of the brief be served upon the learned Attorney General for India within a week from today.

Put up for hearing after the service is completed.

(Y.P.Dhamija)
Court Master

(Veera Verma)
Court Master