

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1633 OF 2007
(@SPECIAL LEAVE PEITITION (CRL.)NO.1501 OF 2007)

RAMESH SAHU Appellant(s)

VERSUS

STATE OF M.P. Respondent(s)

ORDER

Leave granted.

Delay condoned.

Application for exemption from filing O.T. is granted.

The appellant was tried by the Special Judge, Jabalpur for the offence punishable under Section 20(b)(iii)(B) of the N.D.P.S.Act and was sentenced to undergo Rigorous Imprisonment for a period of 10 years and a fine of Rs.1 lakh and in default to suffer Rigorous Imprisonment for 2 years. The prosecution case was that the appellant was found standing in the bus stand with a suitcase and a bag. P.W.6 -the Sub-Inspector of police suspected that the appellant must have been carrying some contraband article and conducted a search of the suitcase and a bag of the appellant and four packets in all weighing about 21.5 kgs. of Ganja were found and seized from the appellant. The Special Judge, based on the evidence of the prosecution, convicted him and sentenced him as above.

The appellant preferred an appeal before the High Court which was dismissed by the impugned judgment dated 28.6.2005. The impugned judgment

records that none appeared for the appellant. In a serious case of this nature, especially when the appellant was unrepresented by any counsel, it was the duty of the High Court to appoint an amicus curiae to hear the case of the appellant on merits. In the instant case, the High Court has only heard the counsel for the State and disposed of the appeal.

The learned Counsel for the appellant has raised several contentions before this Court. He has disputed the recovery allegedly made by PW 6- Sub-Inspector of police. The veracity of the only independent eye-witness Raju Namdev (PW 5) was also challenged before this Court. The discrepancy in the evidence in regard to the time when the search and seizure was made, was pointed out. It was also contended that the Ganja allegedly seized from the appellant was less than 20
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kgs. and that being less than the commercial quantity as per the N.D.P.S. Act, if at all any offence was committed by the

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appellant, that would be a lesser offence and the appellant would have been convicted with a lesser punishment. All these aspects were not considered by the High Court.

Under the above circumstances, we set aside the judgment under appeal and remand the case to the High Court with a request to the High Court to hear the appeal afresh on merits, in accordance with law, after giving a due opportunity of hearing to the appellant at the earliest at least within a period of six months.

The appeal is disposed of accordingly.

Leave granted.

Delay condoned.

Application for exemption from filing O.T. is granted.

The appeal is disposed of, in terms of the signed order.

(G.V.Ramana)

(Veera Verma)

Court Master

Court Master

(signed order is placed on the file)