

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).7307/2011

(From the judgement and order dated 13/01/2010 in CRL.A. No.1133/2004 of The HIGH COURT OF M.P AT INDORE)

STATE OF M.P.

Petitioner(s)

VERSUS

MOHANLAL @ MOHANIA

Respondent(s)

(With appln(s) for c/delay in filing SLP, exemption from filing O.T.,
c/delay in refiling SLP and office report)
(For Final Disposal)

Date: 01/02/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. GOKHALE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Ms. Ayesha Chawdhry, Adv.
Ms. Musharraf Chawdhry, Adv.
Mr. C.D. Singh, Adv.

For Respondent(s) Mr. Sunil Verma, Adv.
Mr. G.B. Singh, Adv.
Mr. Pradeep Kumar Kaushik, Adv.
Mr. Sapam Biswajit Meitei, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

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

Delay condoned.

2. Heard Ms. Ayesha Chawdhry, learned counsel, in support of this petition and Mr. Sunil Verma, learned counsel on behalf of the respondent.

3. This petition seeks to challenge the judgment and order dated 13.01.2010 passed by the Madhya Pradesh High Court in Criminal Appeal No. 1133/2004. The respondent herein was found carrying opium of a quantity of 12 kg. and 200 gms. He was, therefore, prosecuted under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and was convicted under section 18 thereof. He was sentenced to suffer rigorous imprisonment of ten years along with fine of Rs. 1 lakh.

4. The respondent preferred an appeal and the learned Single Judge of the High Court took into consideration the FSL Report which stated that the percentage of morphin in the commodity found was 4.06% and, therefore, the purity of the seized opium came to 495.32 grams, which, the learned Single Judge held, was less than the commercial quantity.

5. Ms. Ayesha Chawdhry, learned counsel for the petitioner, submits that this approach of the learned Judge was erroneous and since the material found was opium and it was certainly not a small quantity, the learned Judge was in error in giving the benefit of Section 18(C) of the NDPS Act to the respondent. She has relied upon a judgment of this Court in Harjeet Singh vs. State of Punjab reported in 2011 (4) SCC 441 in support. The counsel for the respondent has, on the other hand, defended the judgment.

6. We have noted the submissions of both the counsel. Learned counsel for the respondent has also pointed out that in view of the impugned order, the respondent was released on 19.02.2010 by which time he had undergone the sentence of 9 years 5 months and 5 days.

7. According to learned counsel for the petitioner, the punishment has to be not less than ten years. However, having noted that the respondent has already undergone a punishment of 9 years 5 months and 5 days, which is nearing to ten years and in the facts of this case, we do not intend to go into the question of law which has been raised in the present petition. For this very reason, we decline to interfere with the impugned order.

8. The special leave petition is dismissed.

| (S.K. Rakheja)
| Court Master

| |(Indu Satija)
| |Court Master

|