



2020 INSC 677

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.828 OF 2020
(Arising from S.L.P.(Criminal) No.6232 of 2020)
@ Diary No. 6991/2020

Issak Nabab Shah

...Appellant

Versus

The State of Maharashtra

...Respondent

J U D G M E N T

M.R. SHAH, J.

1. Having heard the learned Advocate appearing on behalf of the appellant and the learned Advocate appearing on behalf of the State, the delay caused in preferring the appeal is condoned.

1a. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.03.2016 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal

Appeal No. 357 of 2015, by which the High Court has dismissed the said appeal preferred by the appellant – original accused and has confirmed the judgment and order of conviction passed by the learned Additional Sessions Judge, Kopergaon, convicting the appellant – original accused for the offences punishable under Section 8(c) and 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ‘NDPS Act’) and sentencing him to undergo 10 years rigorous imprisonment and a fine of Rs.1,00,000/- (Rupees one lakh), the original accused no.1 has preferred the present appeal.

2.1 At the outset, it is required to be noted that by order dated 13.10.2020 notice limited to the quantum of sentence has been issued by this Court.

3. Learned Advocate appearing on behalf of the appellant has submitted that the appellant was found to be in possession of 6.300 kilogram of Ganja – Narcotic Substance, which is above the small quantity and below commercial quantity. It is submitted that under the NDPS Act, 20 kilogram of Ganja is considered to be commercial quantity and the punishment for commercial quantity is 10 years rigorous imprisonment and above. It is submitted that however for the quantity between small quantity

and commercial quantity, the punishment is up to 10 years rigorous imprisonment. 3.1 It is submitted that the appellant has already undergone six years rigorous imprisonment out of ten years rigorous imprisonment imposed by the learned trial court and confirmed by the High Court. Therefore, it is prayed to modify the sentence imposed by the learned trial Court, confirmed by the High Court, to the sentence already undergone, considering the fact that at the relevant time the appellant was aged 24-25 years of age and he has learned a lesson and that there was no antecedents and is married and having children and the family depend upon him.

4. Learned Advocate appearing on behalf of the respondent-State has submitted that the appellant-accused was heard by the learned trial Court on sentence and after considering the aggravating factors and that the appellant has been convicted for the offence under the NDPS Act, maximum punishment has been imposed by the learned trial Court which has been confirmed by the High Court. Therefore, it is prayed not to interfere with the punishment imposed by the learned trial Court, confirmed by the High Court.

5. Having heard the learned Advocates appearing for the respective parties and in the facts and circumstances of the case, more particularly when the quantity/Ganja recovered from the appellant was 6.300 kilogram, which is between small quantity and commercial quantity and considering the fact that the maximum punishment for such offence is 10 years rigorous imprisonment, out of which the appellant has already undergone six years rigorous imprisonment, we allow the present appeal in part and modify the impugned judgment and order passed by the learned trial Court, confirmed by the High Court, to the extent of imposing the sentence of six years rigorous imprisonment in place of ten years rigorous imprisonment as imposed by the learned trial Court and confirmed by the High Court. Rest of the judgment and order passed by the learned trial Court, confirmed by the High Court, is hereby confirmed.

6. The appeal is allowed to the aforesaid extent only.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
DECEMBER 03, 2020.

.....J.
[M.R. SHAH]