

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1180 OF 2017
(Arising out of SLP(Cr1.) No.1864 of 2017)

AMAR CHAND APPELLANT (S)
VERSUS
STATE OF HIMACHAL PRADESH RESPONDENT (S)

O R D E R

Leave granted.

The appeal has been preferred by the appellant against the impugned judgment and order dated 15.09.2016 passed by the High Court of Himachal Pradesh at Shimla, in Criminal Appeal No.283/2006 whereby the High Court dismissed the said appeal and upheld the judgment and order dated 23.08.2006 of conviction and sentence passed by the Special Judge, Fast Track Court, Kullu, Himachal Pradesh, in Sessions Trial No.12/2005.

The appellant has been convicted and sentenced under section 17 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') for a period of two years with fine of Rs.10,000/- and under section 20(A) of the NDPS Act, for a period of six months with fine of Rs.1,000/-, and default clauses.

According to the prosecution, on 19.07.2004, the appellant was found in possession of 20 grams Opium and

60 grams Charas and thereafter, he was charged with for commission of offences under Sections 17 and 20 of the NDPS Act. The appellant-accused pleaded not guilty and rather, claimed trial. Having gone through the prosecution evidence, the trial court convicted and sentenced the appellant as above, which was also confirmed by the High Court in appeal.

We have heard learned counsel appearing for the parties and perused the record.

Admittedly, on the date of commission of offence i.e. 19.07.2004, the punishment for offence under Section 17(a) of the NDPS Act was for a term which may extend to six months, or with fine which may extend to Rs.10,000/-, or with both. This punishment was amended later on by Act No.16 of 2014 (section 7 thereof), which came into force with effect from 01.05.2014.

It is well settled principle of law that an amendment of this nature does not operate retrospectively and that only such punishment as was provided in law for the offence on the date of its commission can be imposed by the court. This Court held in the case of *Jawahar Singh Alias Bhagat Ji vs. State of NCT of Delhi - (2009) (6) SCC 490*, that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law which was prevailing at the relevant time.

In the circumstances, we are of the view that the appellant was wrongly convicted and sentenced under section 17(b) of the NDPS Act because only 20 grams Opium was found in his possession which is small quantity and therefore, falls under section 17(a) of the NDPS Act. Hence, the appellant is liable to suffer imprisonment for a period of six months under section section 17(a) of the NDPS Act.

Accordingly, we dispose of this appeal by maintaining the conviction of the appellant under Section 17(a) of the NDPS Act, but reduce the sentence from two years to six months under the said section. We also affirm the conviction and sentence of the appellant under section 20(b) (ii) (A) of the NDPS Act. The fine imposed by the trial court and affirmed by the High Court on both counts, shall remain intact with the default clauses. Both the sentences shall run concurrently.

The appellant is directed to remain in custody if he has not served out the sentence as awarded above.

.....J
[S. A. BOBDE]

.....J
[L. NAGESWARA RAO]

NEW DELHI;
JULY 17, 2017.

ITEM NO.47

COURT NO.8

SECTION II-C

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).1864/2017

(Arising out of impugned final judgment and order dated 15-09-2016 in CRLA No.283/2006 passed by the High Court Of Himachal Pradesh At Shimla)

AMAR CHAND

Petitioner(s)

VERSUS

STATE OF HIMACHAL PRADESH

Respondent(s)

(WITH INTERIM RELIEF)

Date : 17-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Pardeep Gupta, Adv.
Mr. Parinav Gupta, Adv.
Mrs. Mansi Gupta, Adv.
Mr. Moazzam Ali, Adv.
Dr. (Mrs.) Vipin Gupta, AOR

For Respondent(s) Ms. Mandakini Singh, Adv.
Ms. Priyanka Agarwal, Adv.
Mr. Varinder Kumar Sharma, AOR

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

Leave granted.

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

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
BRANCH OFFICER

(Signed Order is placed on the file)