

NIKKU KHAN @ MOHAMMADEEN

v.

STATE OF HARYANA

(Criminal Appeal No. 925 of 2007)

JULY 21,2011

[V.S.SIRPURKAR AND T.S.THAKUR, JJ.]

Narcotic Drugs and Phychotropic Substance Act, 1985:

ss. 2(b) and (c) – Notification specifying commercial quantity of heroin as 250 gm – Heroin recovered from accused being 125 gm with concentration of 16.93% – Conviction and sentence of 12 years and fine of Rs. 1 lac imposed by trial court – Affirmed by High Court – HELD: Accused is liable to be convicted u/s 21(b) and not u/s 21(c) of the Act as, on the relevant date, he was found in possession of 125 gm of heroin which is less than the commercial quantity as prescribed under the Act – The maximum punishment prescribed for the offence u/s 21(b) of the Act is rigorous imprisonment for a term of ten years and with fine of one lakh rupees – Keeping in view the facts and the circumstances of the case, the conviction of the accused is converted from s.21(c) to s.21(b) of the Act and sentence reduced from twelve years to ten years.

E.Micheal Raj Vs. Intelligence Office, Narcotic Control Bureau 2008 (4) SCR 644 = 2008 (5) SCC 161 – relied on.

Case Law Reference:

2008 (4) SCR 644 relied on para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 925 of 2007.

A From the Judgment & Order dated 08.09.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 698-DB of 2005.

R.K. Kapoor, Neelam Khanna for the Appellant.

B Rajeev Gaur 'Nassem' (for Kamal Mohan Gupta) for the Respondent.

The Judgment of the Court was delivered by

C **SIRPURKAR, J.** 1. Appellant Nikku Khan @ Mohammadeen, who has been convicted by both the courts below for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as the "Act") and sentenced to undergo rigorous imprisonment for twelve years and to pay a fine of Rs. one lakh, in default of payment of fine to further undergo rigorous imprisonment for two years, is before us in this appeal.

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E 2. The prosecution case, in brief, is that on 1.6.2003 at 12.30 p.m., ASI Gopi Chand along with other police officials was on patrol duty at Nohar road, Ellenabad when he received a secret information that the accused-appellant, who was indulged in a trade of smack, was likely to arrive in a Maruti Car and narcotic could be recovered from him.

F On receipt of this information, ASI, Gopi Chand issued notice under Section 41 of the Act and sent the same to the Deputy Superintendent of Police, Ellenabad. Thereafter, he held a picket at Nohar Road. When the accused arrived in Maruti Case bearing No. DAJ 4223 he was stopped and after serving a notice under Section 50 of the Act, he was searched in presence of Deputy Superintendent of Police, Ellenabad and heroin weighing 740 grams was recovered from his person.

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H 3. After completion of investigation the accused was sent for trial and both the trial court as well as the High Court have

held that the accused was found in possession of 740 grams of heroin.

4. We have heard learned counsel appearing for the parties and perused the evidence as well as the judgments of the courts below.

5. We do not think that there is anything to dispute regarding the recovery of contraband from the accused on the relevant date. The prosecution has been able to prove that the accused was in possession of the contraband which was recovered from his person. It is also proved that the contraband was heroin.

6. We do not wish to interfere with the conviction awarded by the trial court and affirmed by the High Court. However, insofar as the sentence is concerned, Mr. R.K. Kapoor, learned counsel appearing for the appellant states that the percentage of the concentration was 16.93%. Mr. Kapoor, therefore, points out that the quantity of heroin recovered from the accused virtually comes to 125 grams.

7. We have seen the Notification specifying small quantity and commercial quantity under Section 2 of the Act wherein at serial No. 56, the commercial quantity of heroin is prescribed as 250 grams. Therefore, it is clear that the quantity of heroin which was recovered from the appellant was less than the commercial quantity as prescribed under the Act.

8. In that view, the law laid in E.Micheal Raj Vs. Intelligence Office, Narcotic Control Bureau 2008 (5) SCC 161 shall apply to the present case. We, therefore, hold that the accused is liable to be convicted under Section 21(b) and not under Section 21(c) of the Act as, on the relevant date, he was found in possession of 125 grams of heroin which is less than the commercial quantity as prescribed under the Act. The maximum punishment prescribed for the offence under Section 21(b) of the Act is rigorous imprisonment for a term which may extend

A to ten years and with fine which may extend to one lakh rupees.

B 9. Keeping in view the facts and the circumstances of the present case, while affirming the impugned judgment passed by the High Court insofar as conviction of the appellant is concerned, we convert the conviction of the appellant from Section 21(c) to 21(b) of the Act and reduce the sentence of the accused from rigorous imprisonment for twelve years to ten years. The sentence of fine and default shall remain unaltered.

C 10. The appeal stands disposed of accordingly.

R.P.

Appeal disposed of.