

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3434 OF 2024
(Arising out of SLP(Crl.) No. 13937/2023)

STATE OF KERALA

Petitioner(s)

VERSUS

PRABHU

Respondent(s)

O R D E R

Leave granted.

2. This appeal by special leave by the State is directed against the judgment of acquittal dated 23.5.2023 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No. 87/2021, which in turn was directed against the judgment of conviction passed against the respondent herein upon finding him guilty for the offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, for short, "the NDPS Act".

3. Heard learned counsel for the appellant and also learned Amicus Curiae appearing for the respondent.

4. Admittedly, the quantity of contraband involved in the case is intermediary and that is why, the respondent was charged under Section 20(b)(ii)(B) of the NDPS Act. The case was detected on 10.1.2019 during the course of patrol duty by the Excise Inspector and his party. It is indisputable that contraband viz. 2.050 kgs. of Ganja was found concealed in a bag in his possession and

recovered from the bag. Suffice it to say that the Trial Court, after appreciating the evidence, consisting of the oral testimonies of PW1 to PW4, documentary evidence marked as Exts. P1 to P5 besides the identified material objects viz., M01 to M05, arrived at the conclusion that since the recovery was effected from the bag which was in possession of the respondent herein, Section 50 of the NDPS Act was not to be complied with. Based on the said conclusion and the careful appreciation of the evidence, the Trial Court held that the prosecution had succeeded in proving the guilt against the respondent and convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for six months.

5. Feeling aggrieved by the judgment of conviction, the respondent herein took up the matter in appeal which ultimately culminated in the impugned judgment dated 23.05.2023. A scanning of the impugned judgment would reveal that the judgment of conviction was interfered with and reversed by the High Court on the ground of failure to comply with the formalities prescribed under Section 50 of the NDPS Act rendered the search and seizure illegal. Obviously, to hold so, the High Court has relied on its decision in Sidhik v. State of Kerala (2018) 4 KLT 1257, as well.

6. The Appellant State raised the contention that the reasoning of the High Court for reversing the conviction of the respondent

and acquitting him that the mandatory formalities provided under Section 50 of the Act were not complied with and thereby the search and seizure were rendered illegal is contrary to the law laid down by this Court in view of the indisputable factual position that the contraband was recovered from the bag in possession of the respondent. To buttress the said contention, learned counsel for the Appellant relied on a two-Bench decision of this Court in Ranjan Kumar Chadha vs. State of Himachal Pradesh reported in 2023 SCC OnLine SC 1262. A bare perusal of the said judgment would reveal that after referring to the previous judgments of this Court having precedential value, including the decisions in State of Punjab v. Baldev Singh [(1999) 6 SCC 172] and in State of H.P. v. Pawan Kumar [(2005) 4 SCC 350], this Court held thus:-

“132. For all the foregoing reasons, we are of the view that the High Court was justified in holding that the appellant guilty of the offence under the NDPS act and at the same time, the High Court was also correct in saying that Section 50 of the NDPS Act was not required to be complied with as the recovery was from the bag.”

7. Thus, it is evident that the exposition of law on the question regarding the requirement of compliance with Section 50 of the NDPS Act is no more res integra and this Court in unambiguous term held that if the recovery was not from the person and whereas from a bag carried by him, the procedure formalities prescribed under Section 50 of the NDPS Act was not required to be complied with. It is to be noted that in the case on hand also the evidence indisputably established that the recovery of the contraband was from the bag which was being carried by the respondent.

8. In the said circumstances and in the light of the law laid down by this Court in Ranjan Kumar Chadha (supra), it can only be held that the understanding of the law by the High Court on the said issue of requirement to comply with Section 50 of the NDPS Act is contrary to the law laid down by this Court.

9. In that view of the matter, the impugned judgment cannot be sustained and it requires interference. Accordingly, the impugned judgment whereunder the respondent was acquitted stands set aside and as a necessary sequel we restore the judgment of the Trial Court to the extent it found guilty the respondent under Section 20(b)(ii)(B) of the NDPS Act.

10. Learned Amicus Curiae, appearing for the respondent would submit that the respondent had actually undergone four years, four months and twenty one days of incarceration pursuant to the order of conviction. A perusal of Section 20(b)(ii)(B) of the NDPS Act would reveal that no minimum sentence is prescribed thereunder though it provides that an imprisonment may extend to ten years and with fine which may extend to rupees one lakh.

11. In the aforesaid circumstances and taking into account all the aspects and the law laid down as above, we are of the view that after reversing the judgment of acquittal and restoring the judgment of conviction imposed on the respondent by the Trial Court, the corporeal sentence for the conviction under Section

20(b)(ii)(B) of the NDPS Act can be confined to the period of corporeal sentence already undergone by the respondent. Ordered accordingly. Furthermore, for effecting payment of fine viz., Rs.50,000/- we grant 30 days time from today to the respondent. However, we make it clear that in case of failure on the part of the respondent in effecting payment of fine of Rs.50,000/-, within the stipulated time, he shall undergo the default sentence imposed upon him by the Trial Court as per its judgment.

12. The appeal stands disposed of.

13. Pending application(s), if any, stands disposed of.

.....J.
(C.T. RAVIKUMAR)

.....J.
(SANJAY KAROL)

NEW DELHI;
AUGUST 20, 2024

ITEM NO.39

COURT NO.12

SECTION II-B

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). 13937/2023

(Arising out of impugned final judgment and order dated 23-05-2023 in CRLA No. 87/2021 passed by the High Court Of Kerala At Ernakulam)

THE STATE OF KERALA

Petitioner(s)

VERSUS

PRABHU

Respondent(s)

(Mr. Manoj Kumar, Advocate is appointed as Amicus Curiae for the respondent.

IA No. 16209/2024 - EXEMPTION FROM FILING O.T.

IA No. 16208/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 20-08-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.
Mr. Farhad Tehmu Marolia, Adv.
Mr. Amar Nath Singh, Adv.
Mr. Shivam Sai, Adv.

For Respondent(s) Mr. Manoj Kumar Adv. (Amicus Curiae)

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

Leave granted.

Appeal is disposed of in terms of the signed order, placed on the file.

Pending application(s), if any, stands disposed of.

(DR. NAVEEN RAWAL)
DY. REGISTRAR

(MATHEW ABRAHAM)
COURT MASTER (NSH)