Supreme Court of India
Jawahar Singh @ Bhagat Ji vs State Of Gnct Of Delhi on 5 May, 2009
Author: S.B. Sinha
Bench: S.B. Sinha, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 910 OF 2009
[Arising out of SLP (Crl.) No. 7944 of 2008]

Jawahar Singh @ Bhagat Ji ...Appellant

Versus

State of GNCT of Delhi ...Respondent

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Interpretation of an amendment made in the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") by reason of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act No. 9 of 2001) (for short "the Amending Act") which has come into effect from 2.10.2001 is the question involved in this appeal.

3. The said question arises in the following factual matrix.

On or about 26.09.1999, one Attar Singh, Sub-Inspector received a secret information that the appellant herein would come to a place known as Yamuna Pusta to deliver a consignment of smack. On the basis of the said information, he sent an intimation to the Asstt. Commissioner of Police, Narcotics Branch, whereupon he was directed by the Station House Officer to conduct a raid.

At about 12.15 p.m. on the said date, allegedly, the appellant was apprehended at the given place. He is said to have been provided with an option for getting himself searched before a Magistrate or a Gazetted Officer wherefor a notice under Section 50 of the Act was served. However, as he had not opted to be searched before a Magistrate/ Gazetted Officer, the appellant was searched by Sub Inspector Atar Singh.

Upon search of his person, 600 gms. of smack was recovered. Appellant was prosecuted under Section 21 of the Act. He was sentenced to undergo rigorous imprisonment for ten years. Fine of Rs.1,00,000/- was also imposed upon him.

4. Appellant preferred an appeal thereagainst, which by reason of the impugned judgment dated 23.03.2007 has been dismissed.

5. This Court by an order dated 22.09.2008 issued a limited notice with regard to the question as to whether the quantum of sentence imposed upon the appellant was required to be considered having regard to the amendment carried out by the Parliament in the year 2001 in the Act.

6. Gp. Capt. Karan Singh Bhati, learned counsel appearing on behalf of the appellant, would contend that the Amending Act being a beneficient legislation so far as an accused is concerned, the same will have a retrospective effect. In any event, it was urged, this Court while considering the question with regard to quantum of sentence should consider the effect thereof having regard to the fact that the appellant is in custody for a long period.

7. Ms. K. Amreshwari, learned senior counsel appearing on behalf of the State, on the other hand, would support the impugned judgment.

8. The offence indisputably took place on 26.09.1999. Appellant was convicted by a judgment dated 5.11.2000. As indicated hereinbefore, the Amending Act came into force on 2.10.2001. By reason of the said amendment, "commercial quantity" and "small quantity" were defined as under:

> "2(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;"
>
> 2(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette."

9. Section 21 of the Act, which was also amended by Section 8 of the said Amending Act, reads as under:

> "21. Punishment for contravention in relation to manufactured drugs and preparations Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,--
>
> (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten

> thousand rupees, or with both;
>
> (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
>
> (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

10. It is now beyond any doubt or dispute 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.

As on the date of commission of the offence and/ or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the Amending Act, in our considered opinion, would not arise.

It is also a well-settled principle of law that a substantive provision unless specifically provided for or otherwise intended by the Parliament should be held to have a prospective operation. One of the facets of Rule of Law is also that all statutes should be presumed to have a prospective operation only.

11. Mr. Bhati, however, has drawn our attention to a decision of this Court in State Through CBI, Delhi v. Gian Singh [(1999) 9 SCC 312] wherein a Three-Judge Bench of this Court, while considering the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 in regard to the question as to whether despite the fact that Section 3(2)(i) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 having provided for imposition of death penalty, having regard to a saving clause contained in Section 1(3) thereof mandating for a different outflow even after the expiry of the Act, held:

> "25. We have extracted Section 3(2) of the TADA Act, 1985 above. It could be discerned therefrom that the only sentence which the sub-section permitted for awarding is death penalty in case the terrorist act resulted in the death of any person. It must be pointed out that TADA Act, 1985 remained in force only for a period of 2 years starting from 23-5-1985. In other words, TADA Act, 1985 expired on 22-5-1987 (sic 23-5-1987). Instead of the statute reaching the stage of expiry by the efflux of time, if it was repealed by another statute, nothing would have survived from the repealed statute unless the succeeding enactment incorporates necessary provision to the contrary. This is pithily amplified in Section 6 of the General Clauses Act. But the aforesaid legal implications of repeal of a statute cannot be applied in the case of expiry of a statute, (vide State of Punjab v. Mohar Singh Pratap Singh). Normally the

> proceedings terminate ipso facto with the expiry of the statute. Craies on Statute Law at p. 409 of the 7th Edn. has stated thus: "As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate."

Having regard to the fact that an alternative to the death penalty, i.e., sentence for imprisonment for life, could be imposed under the 1987 Act, it was held:

> "31. If the position was just in the reverse order i.e. the latter Act contained harsher sentence and the former Act contained a lesser sentence the prohibition embodied in Article 20(1) of the Constitution that no person shall "be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence" would have come to the rescue of the offender. But the offender (who is liable to be convicted for the same offence, had it been committed after the coming into force of the subsequent TADA Act, 1987) could have been punished with a sentence of imprisonment for life, because such an alternative is provided in that enactment."

As regards the purpose for which the legislative benevolence carried out by reason of the said Act would be extended, it was held:

> "34. There is inconsistency between the sentencing scope in Section 3(2) of TADA Act, 1985 and in the corresponding provision in TADA Act, 1987. The expression "in any enactment other than this Act" would, under Section 25, encompass even an enactment which, though expired by the efflux of time, continues to operate by virtue of any saving clause. Accordingly, the exclusivity of the extreme sentence contained in Section 3(2) of TADA Act, 1985 must stand superseded by the corresponding benevolent provision in TADA Act, 1987. It is a permissible course and the express prohibition contained in Article 20(1) of the Constitution is not a bar for resorting to the corresponding sub-section in TADA Act, 1987."

12. Act 9 of 2001 did not bring about any significant or material changes in the parent Act. The Parliament had given effect thereto with effect from a particular date, viz., 2.10.2001. If the Amending Act was to be given a retrospective effect, the amendments carried out in regard to the provisions for holding of trial would have been required to be complied with warranting a retrial in terms thereof.

13 One of the objectives of a criminal trial is that delay should be avoided.

The proviso appended to Section 41(1) of the Amending Act categorically provides that the said amendment shall not have any effect to the pending appeals. It is, therefore, an indicator to show

that the concluded trials should not be reopened.

In Basheer alias N.P. Basheer v. State of Kerala [(2004) 3 SCC 609], this Court took notice of the decision of this Court in Gian Singh (supra) stating:

> "22. Inasmuch as Act 9 of 2001 introduced significant and material changes in the parent Act, which would affect the trial itself, application of the amended Act to cases where the trials had concluded and appeals were pending on the date of its commencement could possibly result in the trials being vitiated, leading to retrials, thereby defeating at least the first objective of avoiding delay in trials. The accused, who had been tried and convicted before 2-10-2001 (i.e. as per the unamended 1985 Act) could possibly urge in the pending appeals, that as their trials were not held in accordance with the amended provisions of the Act, their trials must be held to be vitiated and that they should be retried in accordance with the amended provisions of the Act. This could be a direct and deleterious consequence of applying the amended provisions of the Act to trials which had concluded and in which appeals were filed prior to the date of the amending Act coming into force. This would certainly defeat the first objective of avoiding delay in such trials. Hence, Parliament appears to have removed this class of cases from the ambit of the amendments and excluded them from the scope of the amending Act so that the pending appeals could be disposed of expeditiously by applying the unamended Act without the possibility of reopening the concluded trials.
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> 23. Thus, in our view, the Rubicon indicated by Parliament is the conclusion of the trial and pendency of appeal. In the cases of pending trials, and cases pending investigation, the trial is yet to conclude; hence, the retrospective mollification of the rigour of punishment has been made applicable. In the cases where the trials are concluded and appeals are pending, the application of the amended Act appears to have been excluded so as to preclude the possible contingency of reopening concluded trials. In our judgment, the classification is very much rational and based on clearly intelligible differentia, which has rational nexus with one of the objectives to be achieved by the classification. There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2-10-2001, but the appeal is filed after 2- 10-2001, it cannot be said that the appeal was pending as on the date of the coming into force of the amending Act, and the amendment would be applicable even in such cases. The observations of this Court in Nallamilli case would apply to such a case. The possibility of such a fortuitous case would not be a strong enough reason to attract the wrath of Article 14 and its constitutional consequences. Hence, we are unable to accept the contention that the proviso to Section 41 of the amending Act is hit by Article 14."

On the aforementioned finding, the decisions of the Division Benches of the Punjab and Haryana High Court and the Madhya Pradesh High Court, which had applied the said Amending Act with retrospective effect, were overruled.

14. In Amarsingh Ramjibhai Barot v. State of Gujarat [(2005) 7 SCC 550], this Court noticed that the minimum punishment under Section 21(c) of the Act is of ten years with a fine of Rs. 1,00,000/-.

If the said provision is applicable, we do not see as to why the minimum sentence prescribed therein can be held to be not applicable.

This Court in The Superintendent, Narcotic Control Bureau v. Parash Singh [2008 (13) SCALE 372] followed Basheer (supra) opining that by reason of the Amending Act, no new offence was created.

15. Mr. Bhati would contend that it is a fit case where we should reduce the sentence, as has been done in E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau [(2008) 5 SCC 161].

In E. Micheal Raj (supra), this Court did not assign any reason. It did not consider any of the decisions including Gian Singh (supra) and Basheer (supra). It merely held:

> "20. In the present case, the narcotic drug which was found in possession of the appellant as per the analyst's report is 60 gm which is more than 5 gm i.e. small quantity, but less than 250 gm i.e. commercial quantity. The quantity of 60 gm is lesser than the commercial quantity, but greater than the small quantity and, thus, the appellant would be punishable under Section 21(b) of the NDPS Act. Further, it is evident that the appellant is merely a carrier and is not a kingpin."

No ratio was laid down therein. Although this Court noticed that the amendment had come into force with effect from 2.10.2001, the effect thereof had not been considered. It proceeded on the basis that the amendment shall apply.

16. Mr. Bhati strongly relied upon a decision of this Court in Rattan Lal v. The State of Punjab [AIR 1965 SC 444] wherein this Court applied the provisions of Probation of Offenders Act, 1958, stating:

> "...When it was contended that the word "may" in Section 11 of the Act empowers the appellate court or the High Court to exercise the power at its option and the words "any order under the Act" empower it to make an order without reference to the standards laid down in the Act, this Court rejected both the contentions. It held that the expression "may" has compulsory force and that the power conferred on the appellate court was of the same nature and characteristic and subject to the same criteria and limitations as those conferred on courts under Sections 3 and 4 of the Act. This decision lays down three propositions, namely, (i) an appellate court or a revisional court can make an order under Section 6(1) of the Act in exercise of its power under Section 11(1) thereof; (ii) it can make such an order for the first time even though the trial court could not have made such an order, having regard to the finding given by it; and (iii) in making such an order it is subject to the conditions laid down in Sections 3, 4 and 6 of the Act. The only distinguishing feature between the present case and the said decision is that in the present case the trial court did not make the order as the Act was not extended to the area within its jurisdiction and in

> the said decision the trial court did not make the order as it could not, on its finding that the accused was guilty of an offence punishable with imprisonment for life. But what is important is that this Court held that the High Court for the first time could make such an order under Section 11 of the Act, as such a power was expressly conferred with by Section 11 of the Act. We, therefore, hold that the appellate court in appeal or the High court in revision can, in exercise of the power conferred under Section 11 of the Act, make an order under Section 6(1) thereof, as the appellate court and the High Court, agreeing with the Magistrate, found the accused guilty of the offences for which he was charged."

The said decision, in our opinion, has no application in the instant case.

17. We, therefore, are of the opinion that the Amending Act cannot be said to have any retrospective effect. The appeal is dismissed accordingly.

.....J.

[S.B. Sinha] .....J.

[Dr. Mukundakam Sharma] New Delhi;

May 05, 2009