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MAN SINGH & ANR.

v.

STATE OF M.P.

(Criminal Appeal No. 1516 of 2008)

B

SEPTEMBER 24, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

C

Practice and Procedure – Disposal of criminal appeal of accused in absence of his counsel – Propriety of – Conviction under NDPS Act, 1985 – Accused sentenced to 20 years RI – He filed appeal – On the date, matter was taken up by High Court, Advocate appointed through Legal Aid Committee for accused did not appear – High Court heard the matter with assistance of a panel lawyer for the State and dismissed the appeal without engaging another counsel or appointing an Amicus Curiae – Held: Considering the seriousness of the offence, it would have been appropriate for the High Court to ask the Legal Aid Committee to appoint another counsel – Matter remitted back to High Court for fresh hearing – Narcotic Drugs and Psychotropic Substances Act, 1985 – ss. 8, 18, 21 and 29.

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The Trial Court convicted Appellant under Section 8/18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and in the alternative under Section 8/29/18(b) of the Act and under Section 8/21(c) and in the alternative 8/29/21(c) and in the alternative 8/28/2(c) of the Act and sentenced him to 20 years RI. Appellant filed appeal before High Court.

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On the date the matter was taken up by the High Court, the Advocate appointed through the Legal Aid Committee for the Appellant did not appear and the High Court heard the matter with the assistance of a panel lawyer for the Respondent-State and dismissed the appeal

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without engaging another counsel or appointing an Amicus Curiae. A

Allowing the appeal and remitting the matter back to High Court for fresh hearing, the Court

HELD: The High Court could have in the circumstances of the case required the Legal Aid Committee to appoint another counsel. Considering the seriousness of the offence it would have been appropriate for the High Court to do so. [Para 4] [968,E] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1516 of 2006 C

From the final Judgment and Order dated 18.4.2007 of the High Court of Madhya Pradesh, Bench at Indore in CrI. Appeal No. 1235 of 2003 D

Ashok Kumar Sharma, Sanjay Misra, Avinash Kumar Jain and Yogesh for the Appellants.

C.D. Singh, Sunny Chowdhary, Vairagya Vardhan and Aditya Singh for the Respondent. E

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the High Court of Madhya Pradesh, Jabalpur, Bench at Indore, dismissing the appeal filed by the appellant who had questioned his conviction for offence punishable under Section 8/18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter for short 'the Act') and in the alternative under Section 8/29/18(b) of the Act and under Section 8/21(c) and in the alternative 8/29/21(c) and in the alternative 8/28/2(c) of the Act and sentence of 20 years RI and fine of rupees two lakhs with a stipulation that in the event of default of payment of fine each of the accused/appellants would suffer RI for 5 years. It appears that when the matter was taken up by the H

A High Court learned Advocate who was appointed through Legal Aid Committee did not appear. Learned Single Judge heard the matter with the assistance of the learned Panel Lawyer for the respondent-State.

B 3. Learned counsel for the appellant submitted that the lawyer who was appointed by the Legal Aid Committee did not appear, when the matter was called, for the reasons best known to him and the High Court should not have dismissed the appeal without engaging another counsel or at least without appointing an Amicus Curiae. Learned counsel for the respondent-State on the other hand submitted that the High Court has analysed the relevant evidence including the evidence of PWs 9 and 10, who were the official witnesses. It is pointed out that Sections 42 and 50 of the Act have no relevance because the alleged seizure took place in a public place and search was not of person.

D 4. We need not deal with the merits of the case as we find that the learned counsel appointed by the Legal Aid Committee did not appear on the date fixed before the High Court. The High Court could have in such circumstances required the Legal Aid Committee to appoint another counsel. Considering the seriousness of the offence it would have been appropriate for the High Court to do so.

E 5. In the circumstances, we set aside the impugned order and remit the matter to the High Court for a fresh hearing.

F 6. The appeal is allowed.

B.B.B.

Appeal allowed.