

A
ALAKH RAM
v.
STATE OF U.P.

JANUARY 8, 2004

B [K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985:

C ss. 8 and 20—17 ganja plants seized from agricultural field belonging to accused—Accused prosecuted on the charge that he planted ganja plants in his field—Conviction and 3 years imprisonment awarded by trial court—Affirmed by High Court—Held, in order to prove the guilt, it must be proved that accused had cultivated the prohibited plants—There is no evidence that there was cultivation of Ganja plants by accused—Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that the said plants had been the result of cultivation—They may have sprouted there by natural process and the accused or anybody who is the owner of the property must not have been diligent in destroying them—Accused not found guilty of offence u/s 20—His conviction and sentence set aside.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 36 of 2004.

From the Judgment and Order dated 17.1.2003 of the Allahabad High Court in Crl. A. No. 243 of 1994.

F R.P. Gupta, Ms. Kamakshi and S. Mehlwal for the Appellant.

R.P. Mehrotra, R. Singh and Garvesh Kabra, for the Respondent.

The following Order of the Court was delivered :

G Leave granted.

The appellant Alakh Ram was tried by the Additional Sessions Judge, Jhansi for the offence punishable under Section 8 read with Section 20 of the NDPS Act. He was found guilty under Section 20 and was sentenced to

undergo three years imprisonment. He filed an appeal before the High Court and by the impugned Judgment, the High Court declined to interfere with the conviction and sentence. A

The case against the appellant was that he planted Ganja in his Artieo field and on 9.6.1992, the Station Officer Ravinder Kumar Mishra with Constable. P.S. Katera visited the agricultural field belonging to the appellant and seized 17 Ganja plants allegedly planted by the appellant. Two witnesses were also present at the time of the recovery of these plants. All the 17 plants were taken into custody and on chemical analysis, it was proved that these plants were Ganja plants. The appellant on being questioned under Section 313 Cr.P.C. stated that he had filed a criminal complaint against four persons and the SDM had passed order in his favour and that when he went to the police station to serve the order in his favour and that when he went to the police station to serve the order passed by the SDM, he was falsely implicated in the case. B C

We heard the appellant's Counsel and the Counsel for the respondent. Under Section 8(b) of the NDPS Act, cultivation of opium poppy or any cannabis plant is prohibited and under Section 20 of the NDPS Act, such cultivation of cannabis plant is made punishable with imprisonment and fine. In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant. There must be supporting evidence to prove that the accused cultivated the plant and it is not enough that few plants were found in the property of the accused. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happened to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation. D E

In the instant case, one witness was examined to prove the nature of the offence committed by the accused. It was PW1 who accompanied the police officers to the appellant's field. The evidence given by PW1 is to the following effect:- F

"Alakh Ram is a farmer. I do not know the number of those fields. I do not know the number of that field in which Ganja were sown. I do not know as to who had cultivated the plants of Ganja. That field is irrigated and Madho also works in that field. Neither have I seen anyone planting the Ganja plants nor do I know when was it planted." G

- A The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the Ganja plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence either oral or documentary to show that the appellant has a right over the property from which the Ganja plants were recovered. There is no evidence that the appellant cultivated these Ganja plants. Having regard to the extent of the property and the number of plants recovered from that the property, it cannot be said that these plants had been the result of cultivation. They may have been sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of Ganja plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.

E In the result, we find appellant Alakh Ram not guilty of the offence under Section 20 of the NDPS Act. His conviction and sentence is set aside and his bail bonds would stand cancelled.

The appeal is allowed accordingly.

R.P.

Appeal allowed.