

A THE SUPERINTENDENT, NARCOTIC CONTROL BUREAU

v.

PARASH SINGH

(Criminal Appeal No. 972 of 2003)

OCTOBER 15, 2008

B

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

C *Narcotic Drugs and Psychotropic Substances Act, 1985*
– ss.8, 20(b)(i) and 20(b)(ii)(C) – Complaint made under s.8
alleging commission of offence under s.20(b)(i) – Meanwhile,
Amendment Act, 2001 introduced changes in s.20 – Charges
framed under s.20(b)(ii)(C) (as amended) – Quashing of, by
D High Court on ground that new offence was created as greater
punishment was imposed and direction to trial court to frame
charges under s.20(b)(i) – Correctness of – Held: Not correct
– Before and after amendment, the ingredients of s.8 remained
the same – It did not create an offence retrospectively – Only
punishment for contravention in relation to cannabis plant and
E cannabis was amended – Thus no new offence was created
by the Amendment Act – But at the same time no punishment
greater than what was originally provided for could be imposed
on the accused – Constitution of India, 1950 – Article 20(1) –
Administration of Criminal Justice – Legislation – Amendment
of statute providing greater penalty – Sentence.

F

On 21.9.2001, a complaint was filed under s.8 of the
NDPS Act, 1985 alleging commission of offence punish-
able under s.20(b)(i) of the Act. Meanwhile the Act was
amended and charges were framed under s.20(b)(ii)(C) as
G inserted by the NDPS (Amendment) Act, 2001. The High
Court quashed the charges and directed trial court to
frame charges under s.20(b)(i). It was of the view that a
new offence was made out because a greater punishment
was imposed.

H

In the instant appeal, it was contended for the appellant that no new offence was created but what was provided for related to more stringent sentence. A

Dismissing the appeal with certain clarifications, the Court

HELD: 1.1. It is manifest from Article 20(1) of the Constitution of India that it prohibits (1) making an Act for the first time and then making that law retrospective and (2) the imposition of the penalty may not be higher than what is prescribed in law which was in force at the time of the commission of the offence. The validity of NDPS (Amendment) Act, 2001 was upheld by this Court. The Court held that (a) all cases pending before Courts on 2.10.2001 and (b) all cases under investigation as on that date would be disposed of in accordance with the provisions of the Act as amended by the Amending Act. [Para 5] [478-E] B C D

1.2. Before the amendment as well as thereafter, the ingredients of s.8 of NDPS Act, 1985 remained the same and there was no amendment in this provision. Only the provision imposing punishment for contravention in relation to cannabis plant and cannabis, i.e. s.20 of the Act has been amended by the Amendment Act. Thus, no new offence was created by the Amendment Act. But at the same time no punishment higher than what was originally provided for can be imposed on the accused. [Paras 5, 6] [479-C-D] E F

Basheer @ N.P. Basheer v. State of Kerala (2004) 3 SCC 609; State through CBI Delhi v. Gian Singh (1999) 9 SCC 312; T. Barai v. Henry Ah Hoe & Anr. (1983) 1 SCR 905 – referred to.

CASE LAW REFERENCE G

(2004) 3 SCC 609	referred to	Para 5
(1999) 9 SCC 312	referred to	Para 5
(1983) 1 SCR 905	referred to	Para 5

H

A CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 972 of 2003

From the final Judgment and Order dated 27.3.2002 of
the High Court of Calcutta in C.R.R. No. 514 of 2002

B B.B. Singh, Binu Tamta, Kumar Rajesh Singh, Manoj
Dwivedi and Sushma Suri for the Appellant.

Arjun Narayan Deo and Balbir Singh Gupta for the Re-
spondent.

C The Judgment of the Court was delivered by

D **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to
the judgment of the Calcutta High Court quashing charges framed
under Section 20(b)(ii)(C) of the Narcotic Drugs and Psycho-
tropic Substances Act, 1985 (in short the 'NDPS Act') as
amended by Act 9 of 2001. The High Court directed the trial
court to frame charges under Section 20(b) (i) of the Act.

2. The background facts in a nutshell are as follows:

E A complaint was filed under Section 8 of the Act alleging
commission of offence punishable under Section 20(b)(i) of the
Act on 21.9.2001. The un-amended provision reads as follows:

"20. Punishment for contravention in relation to Cannabis
plant and Cannabis—————"

F Whoever, in contravention of any provision of this Act or
any rule or order made or condition of licence granted
thereunder:

(b) Produces, manufactures, possesses, sells, purchases,
transports, imports inter-state, exports inter-state or uses
cannabis, shall be punishable————

G (i) Where such contravention relates to Ganja or the
cultivation of Cannabis Plant, with rigorous imprisonment
for a term which may extend to five years and shall also be
liable to fine which may extend to fifty thousand
rupees....."

H

The NDPS Amendment Act, 2001 (hereinafter referred to as the 'Amendment Act') introduce certain changes. Charges were framed in the instant case under Section 20(b)(ii)(c) of the Act (as amended on 16.1.2002). The amended provision read as follows:

"20. Punishment for contravention in relation to cannabis plant and cannabis-Whoever, in contravention, of any provisions of this Act or any rule or order made or condition of licence granted thereunder:

(b) Produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-

(ii) Where such contravention relates to sub-clause (b)-

(a) and involves small quantity, with rigorous imprisonment for a term which may extent to six months, or with fine, which may extend to ten thousand rupees, or with both;

(b) and 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) and 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."

The High Court was of the view that a new offence was made out because a higher punishment was imposed. Stand of the appellant is that no new offence was created but what was provided for related to more stringent sentence. It is, therefore, submitted that the High Court was not justified in holding that the new offence was committed.

A 3. Learned counsel for the respondent supported the judgment of the High Court.

4. In order to appreciate the stand of the learned counsel for the appellant a reference to Article 20 of the Constitution of India, 1950 (in short the 'Constitution') reads as follows:

B *Protection in respect of conviction for offences.*

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor 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.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

E 5. It is manifest from Article 20(1) that it prohibits (1) making an Act for the first time and then making that law retrospective. In other words it is not permissible to create an offence retrospectively (2) the imposition of the penalty may not be higher than what is prescribed in law which was in force at the time of the commission of the offence. It needs to be noted that the validity of Amendment Act was challenged before this Court in F *Basheer @ N.P. Basheer v. State of Kerala* [2004(3) SCC 609]. The validity of the act was upheld. This Court held that (a) all cases pending before the Court on 2.10.2001; (b) all cases under investigation as on that date shall be disposed of in accordance with the provisions of the Act as amended by the Amending Act. G In *State through CBI Delhi v. Gian Singh* [1999(9) SCC 312] it was held with reference to Article 20(1) of the Constitution that it is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribes and no ex-post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation H

down grades the harshness of the sentence for the same offence, it would be salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence. The view expressed in *Gyan Singh's* case (supra) finds support from the case of *T. Barai v. Henry Ah Hoe & Anr.* [1983 (1) SCR 905]. The High Court was not justified in holding that new offence was created. Before the amendment as well as after the amendment the ingredients of Section 8 remain same and there was no amendment in this provision. Only punishment for contravention in relation to cannabis plant and cannabis i.e. Section 20 of the Act has been amended by the Amendment Act.

6. The appeal is, therefore, dismissed with clarification that no new offence was created by the Amendment Act. But at the same time no punishment higher than what was originally provided for can be imposed on the accused.

7. The appeal is dismissed with the aforesaid clarification.

D.G.

Appeal dismissed. E