

P.P. Beeran vs State Of Kerala on 11 January, 2001

Equivalent citations: AIR2001SC2420, 2001(2)ALD(CRI)159, 2001(2)ALT(CRI)70, 2001CRILJ3281, JT2001(4)SC184, (2001)9SCC571, AIR 2001 SUPREME COURT 2420, 2001 (9) SCC 571, 2001 AIR SCW 2406, 2004 SCC(CRI) 1116, (2001) 4 JT 184 (SC), (2001) 2 CURCRIR 127, (2001) 1 KANT LJ 533, (2002) 1 ALLCRILR 510, (2001) SC CR R 850, (2001) 2 EASTCRIC 254, (2001) 2 EFR 390, (2001) 21 OCR 107, (2001) 4 PAT LJR 26, (2001) 2 CURCRIR 38, (2001) 4 SUPREME 446, (2001) 2 ALLCRIR 1196, (2001) 42 ALLCRIC 918, (2001) 4 ALLCRILR 632, (2000) 19 OCR 352, (2000) 90 CUT LT 619, (2001) 3 CRIMES 171, 2001 (2) ANDHLT(CRI) 70 SC

Bench: K.T. Thomas, R.P. Sethi, B.N. Agrawal

JUDGMENT

1. Leave granted.

2. Appellant stands convicted under Section 17 of the Narcotic Drugs and Psychotropic Substances Act. 1985 (hereinafter referred to as 'the N.D.P.S. Act') and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/- and in default of payment of fine amount he has to undergo a simple imprisonment for a further period of 3 months. He filed an appeal before the High Court. A learned single Judge of the High Court confirmed the conviction and sentence and dismissed the appeal.

3. The case alleged against him shows that he was found in possession of 23.5 grams of opium at the time when he was intercepted and searched by PW2, sub-inspector of police. We have noticed that two witnesses were called by PW2 at the time of search out of whom one was examined as PW1 and the other was not examined. But even the one examined (PW1) did not support the prosecution and hence he was treated as hostile. Though an argument was addressed by Mr. R.Venkataramani, learned senior counsel for the appellant that the evidence of PW2, sub-inspector of police remained uncorroborated, and therefore, that should not be made the sole basis for conviction, it is too late in the day for us to reject the testimony of PW2 on that ground alone. Even otherwise, it cannot be said that evidence of PW2 remains uncorroborated because the fact that opium was recovered from his person and also Exhibit P2 which is an endorsement containing the signature of the appellant could be treated as circumstances corroborating the testimony of PW2.

4. Learned senior counsel then contended that there was factually non compliance of Section 50 of the NDPS Act inasmuch as the search was not conducted in the presence of a gazetted officer or a Magistrate. That point also seems to be very fragile for the appellant as the concurrent finding shows that PW2 in fact put it to the appellant whether he required the search to be conducted in the presence of a gazetted officer or a Magistrate and the answer was in the negative. This was

communicated in the form of a written record as is evidenced by Exhibit PW2. Hence, we are not disposed to interfere with conviction of the appellant on the ground of non-compliance of section 50 of Act.

5. As a last attempt, Mr. Venkaataramani made the following endeavour :

Section 27 of the NDPS Act says that whoever is in possession of any narcotic drug or psychotropic substance of "a small quantity" which is proved to have been intended for his personal consumption and not for sale or distribution, the offence would run down to a much lesser rigorous one as the Court would then be in a position to consider awarding imprisonment as sentence for a term which may extend to one year or with fine or with both.

6. The said defence is adopted now as a last attempt on the basis of the fact that the opium recovered from the appellant was only 23.5 grams. The Central Government by Notification, in exercise of the powers conferred by Explanation (1) to Section 27 of the NDPS Act had specified the 'small quantity' to be 25 grams in respect of opium. For the purpose of this defence we extract the relevant portion of the said notification here-under :

Central Government Notification No. G.O. 527(E), dated July 16, 1996, published in the Gazette of India, Extra., Part II, Section 3(ii) dated 23rd July 1996.

In exercise of the powers conferred by Explanation (I) to Section 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of the notifications of the Government of India, in the Ministry of Finance, Department of Revenue, Numbers S.O. 825(E), dated 14th November, 1985 and S.O. 827(E), dated the 14th November, 1985 except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the quantity mentioned in Column (3) of the Table below, in relation to the narcotic drugs or psychotropic substances mentioned in the corresponding entry in Column (2) of the said Table, as "small quantity" for the purpose of Clause (b) of that section.

TABLE Sl. No. Name of the narcotic drug and psychotropic substance Quantity (in grams)

1.

Opium and any preparations containing opium

7. Shri Venkataramani submitted that as a matter of fact the appellant told PW2 at the very outset itself that the opium in his possession was intended for his personal consumption. Though the same cannot be used as evidence by us Mr. KMK Nair, learned counsel for the State, after checking up the record, submitted that what the senior counsel has said is true to facts. We are dismayed in that the defence under Section 27 of the Act has not been adopted by the counsel who defended the appellant

at the trial stage. We have a feeling of anguish that the appellant had suffered this long period of incarceration solely on account of being improperly defended at the trial Court and, we may say, without proper thought the defence was put forward. If the consequence was not so serious we perhaps would not have persuaded ourselves for making the said observation. But in a case where the Parliament has afforded very substantial benefit to a person who possesses only a small quantity of narcotic drug for his personal consumption we feel, in the interest of justice, that appellant should be given one more opportunity at the trial court to advance a pleading on the strength of Section 27 of the Act.

8. We make it clear that this shall not be treated as a precedent, but will be confined to the facts of this case, as such a course is warranted to avert serious miscarriage of justice and disastrous consequences to a citizen.

9. In order to facilitate the trial Court to afford the appellant one more opportunity as aforesaid, we set aside the conviction and sentence passed on him and remit the case to the trial Court for the limited purpose of affording the appellant an opportunity to adopt a defence under Section 27 of the NDPS Act. We order the appellant to be released on bail until the trial is finally over. The trial Court shall specify the conditions of such bail.

10. We direct the trial court further to appoint a competent advocate to defend the appellant in the trial Court at the State expense, if he is not having any counsel of his own.

11. Despatch the records of the trial Court.

12. This appeal is disposed of accordingly.