Union Of India vs Kuldeep Singh on 8 December, 2003

Equivalent citations: AIR 2004 SUPREME COURT 827, 2003 AIR SCW 7045, 2004 CRI LJ (NOC) 205, 2004 ALL MR(CRI) 541, (2003) 9 JT 584 (SC), (2004) 4 RECCRIR 818, (2004) 14 ALLINDCAS 528 (SC), (2004) 1 JCJR 146 (SC), (2004) 1 CRIMES 204, 2004 (1) SRJ 547, 2004 SCC(CRI) 597, 2004 (2) SCC 590, 2004 (1) UJ (SC) 638, 2003 (10) SCALE 496, 2003 (9) JT 584, (2004) 1 CRILR(RAJ) 204, (2004) 3 CURCRIR 302, (2004) 2 RAJ CRI C 698, (2004) 3 RAJ LW 1631, (2004) 1 RAJ LR 670, (2004) 2 DMC 133, 2004 (1) SLT 74, (2004) 1 ALLCRILR 407, (2004) 1 CRIMES 667, (2004) 1 CHANDCRIC 14, 2004 CRILR(SC MAH GUJ) 1, 2004 CRILR(SC&MP) 1, (2004) 13 INDLD 950, (2004) 1 ALLCRILR 909, (2003) 10 SCALE 496, (2004) 1 EFR 208, (2004) 1 MADLW(CRI) 380, (2005) 30 OCR 300, (2004) 1 RECCRIR 89, (2004) 1 CURCRIR 33, (2003) 8 SUPREME 921, (2004) 1 ALLCRIR 825, (2004) 2 GCD 1222 (SC), (2004) 48 ALLCRIC 878, 2004 (1) ALD(CRL) 324, (2004) 2 WLC (RAJ) 390

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

```
           CASE NO.:
Appeal (crl.)  1468 of 2003
Special Leave Petition (crl.)  2827 of 2003

PETITIONER:
Union of India

RESPONDENT:
Kuldeep Singh

DATE OF JUDGMENT: 08/12/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
```

J U D G M E N T ARIJIT PASAYAT,J Leave granted.

The Union of India questions legality, desirability and proprietary of reducing sentence after conviction as done by the Rajasthan High Court in the impugned judgment. The respondent was found guilty of offences punishable under Section 9A/25A and 9A/25A read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'Act').

Factual background which led to trial of the respondent is essentially as follows:

> Shri R.P. Sharma, Director of Narcotics Control Bureau, Jodhpur received a confidential information on telephone in the night dated 12.12.1995 about illicit transactions of Acitic N Hydrite and on the basis of it he constituted a team of officers of the Department vide order Exb.P-1 and the team along with the Director, Narcotics Control Bureau, Jodhpur started for Sri Ganganagar at 21.00 hours. Dr. R.P. Sharma informed officers of the team that one thousand litre Acitic N Hydride has been reportedly concealed in a Kachha Kotha (unripe-room) constructed in the field situated on the way of village Bhagasar Aborlya and village Chak Maharajka or in the nearby area. B.S. Vasistha (PW-1) was appointed as the seizing officer and he was ordered to execute the proceedings. In compliance thereof he reached on the site on 13.12.95 at about 6.30 hours, called independent witnesses Tiku Ram and Sakata Ram and made inquiries about the Kotha constructed in the field situated on the way of Bhagasar and Chak Maharajka village. He came to know that the Kotha belongs to accused-respondent Kuldeep Singh and the agriculture field has been given to one Fateh Mohammad for cultivation, whereupon Fateh Mohammad was called and interrogated. He informed that the Kotha belongs to accused-Kuldeep Singh. Thereupon Kuldeep Singh was called from his house and the closed Kotha was opened by the accused wherein forty four plastic containers kept under the chaff of wheat were found.

Out of them 43 containers were of black colour and one was of white colour. When the licence in respect of keeping and bringing Acitic N Hydride was demanded from the accused, same was not produced. In the presence of Panchas and Kuldeep Singh, B.S. Vasistha divided 44 containers in two-two batches and marked them separately, which on weighing came to 880 litres of Acitic N Hydride. Two samples from each of the lots were taken in glass bottles and marks were made thereon and the remaining materials were seized separately and sealed. On the seal labels affixed on each container signatures of accused-Kuldeep Singh and the panch witnesses were obtained. The accused was given notice in respect of recording his statement, which was recorded, and he was arrested. The material was kept in Kotwali, Ganganagar for safety. The seized samples and the material articles were deposited in the malkhana of the Narcotics Control Bureau, Jodhpur. The report under Section 57 was forwarded to the higher authorities. The samples were sent for examination. The search of accused's house was conducted on 24.11.95 wherein one diary and one inland letter were found and seized. Therefrom it appeared that the other accused persons Major Singh and Jagtar Singh had relations with him and they were participants in this conspiracy. Information was sent to the higher authorities. The recovered article was found to be Acitic N Hydride from the report of Revenue Control Laboratory. After investigation the challan was filed against the accused under Section 9A read with Section 25A and Section 29 of the Act. The charges under Sections 9A/25A and Sections 9A/25A read with Section 29 of the Act were framed, read over and explained to accused- Kuldeep Singh, who denied the charge and claimed trial. Evidences of ten witnesses were recorded and the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code'). He was convicted and sentenced as noted supra.

In the appeal filed before the High Court, the accused as appellant did not seriously question the conviction, but took the stand that sentence of 10 years rigorous imprisonment on each of the convictions and fine of Rs.1,00,000/- on each ground with default stipulation of one year is the maximum sentence which has been awarded by the trial Court. This was not a case where the maximum sentence should have been awarded. As there is no provision for awarding any minimum sentence for both the charges and the provisions only stipulated maximum sentence of 10 years imprisonment and fine upto Rs.1,00,000/-, the maximum sentences both custodial and fine should not have been imposed. It was pointed out that the trial Court had not considered this aspect and merely on the ground that 880 litres of the contraband had been recovered and the quantity of heroine which could have been made therefrom should not have weighed for awarding the maximum sentence. With reference to the submissions made before the trial Court, it was pointed out that the father of the accused is a person of 85 years of age and the mother had expired four months earlier and there is no other earning member. Further, it was pointed out that the accused had also remained in custody for six and half years and, therefore, the custodial sentence should be reduced to the period undergone and fine imposed should also be reduced. The High Court noticed the factual position and held that the conviction has been rightly made but taking note of the fact that there was no evidence to show that the accused was a habitual offender the sentence was reduced to the period of custody undergone which was taken to be 6 = years, and the fine was also reduced to Rs.25,000/- on each count. The reduction in sentence is assailed in the present appeal.

Learned counsel for the appellant submitted that the leniency shown by the High Court in essence amounts to showing misplaced sympathy. The Act was enacted to curb growing menace of the illicit drug traffic and drug abuse. The factors which weighed with the High Court to reduce sentence had no rationale with the object sought to be achieved by imposing stringent punishments. The prayer therefore was to restore the sentence awarded by the trial Court.

In response, learned counsel for the accused submitted that the legislative intent is clear from the fact that no minimum sentence is prescribed and the sentence to be awarded is discretionary. The Court has power to impose appropriate sentence looking into the facts of a particular case. In the case at hand, the High Court has taken note of several relevant factors in directing reduction of sentence and this is not a fit case where jurisdiction under Article 136 of the Constitution of India, 1950 (in short the 'Constitution') is to be exercised.

Before dealing with the respective submissions it would be appropriate to take a journey along the legislative history leading to enactment of the Act. The statutory control over narcotic drugs was earlier exercised through a number of Central and State enactments. The principal Central enactments were the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 which had become more or less obsolete, and practically ineffective in combating the ever-growing menace of illicit drug traffic and drug abuse, both at the national and international levels. In the Statement of Objects and Reasons leading to enactment of the Act it was clearly noticed that during recent years new drugs of addiction which are commonly known as psychotropic substances have appeared on the scene and posed serious problems endangering the health and safety of the citizens seriously eroding the morale of the society. The devastating effects of narcotic drugs on any person who comes to its touch are too well known. Normally, such a person ceases to be a normal human

being, and is more or less reduced to a zombie living animal existence and rushing fast to meet the maker. Divine qualities of an individual who consumes narcotic drugs disappear and they are the first sacrifices one normally makes while falling prey to use of drugs. Anxiety of the legislature is to prevent the adverse affect of such drugs and substances on the society. The Act like any other enactment aims at regulating human conduct. Drugs abuse and drugs addiction are corroding the health fabric of the society. The efficacy of the Act depends on its implementation and a proper use of it to meet the challenges posed by the drug traffickers and smugglers and their tribe. The law has been made very stringent and, therefore, this court had occasion to highlight the need for strict compliance with the requirements of the Act.

In that background the sufficiency of sentence in the case at hand has to be gauzed. Law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be as it should be a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which would enter into the area of consideration.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical

departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGDautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Similar view has also been expressed in Ravji v. State of Rajasthan, (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are

germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

An offence relating to narcotic drugs or psychotropic substances is more heinous than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides shattering the economy of the nation as well. That the legislature intended to make the offences under the Act so serious to be dealt with sternly and with an iron hand is made clear by providing for enhanced penalties, including even death sentence, in certain class of cases, when convicted for the second time.

It is true as contended by learned counsel for the respondent- accused that no minimum sentence is prescribed, but the sentence imposed should fit in with the gravity of offence committed but in the teeth of the other indications in the enactment, mere absence of a provision for minimum sentence is no reason or justification to treat the offences under the Act as any less serious as assumed by the High Court. It was highlighted by learned counsel for the respondent that the Court had a discretion which according to him has been rightly exercised. The High Court seems to wholly misdirected itself not only as to the seriousness of the offences but also with reference to the relevant consideration which should weigh with the Court in exercising its discretion.

Discretion is to know through law what is just. Where a Judge has and exercises a judicial discretion his order is unappealable unless he did so under a mistake of law or fact or in disregard of principle, or after taking into account irrelevant matters. It will help to show this if it can be shown that there were no materials on which he could exercise his discretion in the way he did. Not any one of the reasons attempted to be enumerated by the High Court in this case could in law be viewed as either relevant or reasonable reasons carrying even any resemblance of nexus in adjudging the quantum of punishment in respect of an offence punishable under the Act.

When any thing is left to any person, Judge or magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty of power of acting without other control than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary).

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L.C., in Sharp v. Wakefield, (1891) Appeal Cases 173). Also (See S.G. Jaisinghani v. Union of India and Ors. (AIR 1967 SC 1427).

The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

> "The discretion of a Judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said (Lord Camden, L.C.J., in Hindson and Kersey (1680) 8 How, St. Tr.57.) If a certain latitude or liberty accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.
>
> Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (Per Willes J. in Lee v Budge Railway Co., (1871) LR 6 CP 576, and in Morgan v. Morgan, 1869, LR 1 P & M 644).
>
> As indicated supra, the discretion does not appear to have been judiciously and judicially exercised by the High Court in this case. When the volume of contraband articles is taken note of, it is sufficient for a conclusion that the quantity of finished product out of it which would have been extracted it would have been nearly 300 kilograms of heroine, and the accused would have got about forty kilograms as admitted by him. The disastrous effect (of this quantity of heroin) would be

mind-boggling. The High Court seems to have been swayed by the age of accused's father, his family problems and more importantly he being not a "habitual offender". Such considerations are really meaningless when one considers the fact that the accused was in possession of contrabands which would have destroyed the health and mental equilibrium of thousands of people. The Court was not dealing with an accused charged with commission of any minor offence where he being not a habitual offender may have some relevance. But it is really inconsequential for a drug trafficker and smuggler. The reasons given by the High Court to reduce the sentence, according to us, have no foundation. The inevitable conclusion is that the appeal deserves to be allowed which we direct. To put it differently, the sentence imposed by the trial Court is restored. The respondent has been released pursuant to the High Court's judgment. He shall surrender to custody to suffer remainder of the sentence as awarded by the trial Court. The appeal is allowed.