

NCB Vs Moscardini Giovanni Pietro & Other

**IN THE COURT OF SH. SUDESH KUMAR II : SPECIAL JUDGE - NDPS
PATIALA HOUSE COURTS : NEW DELHI**

**NCB Vs Moscardini Giovanni Pietro & Other
Case No. SC/9273/16**

06.02.2019

Present: Sh. P.C. Aggarwal, Ld. SPP for NCB.

Both convicts namely Moscardini Giovanni Pietro and Rebernik ULA are present with Ld. Counsel Sh. Sumit Sharma.

Sh. Jaka Miklavcic, Minister Plenipotentiary, Embassy of the Republic of Slovenia.

1. PW 1 Sh. Deepak Atri (Intelligence Officer), PW 2 Sh. Vikas Yadav (IO), PW 3 Sh. Arvind Kumar Ojha (IO) and PW 4 Sh. Mithilesh Jha, (Senior Scientific Asstt., CFSL (CBI) were already examined and discharged.

2. Perusal of the file reveals that both accused are facing trial for the offences U/s 29 of NDPS Act and section 20 (B) (ii) (b) of NDPS Act r/w section 29 NDPS Act.

3. On 05.02.2019, both accused have voluntarily pleaded guilty to the offences charged with and their statements to this effect were already recorded. They were hence convicted for the said offences.

4. Both the convicts have mentioned about the circumstances in which the offences were committed and the mitigating circumstances which the Court may take into consideration while sentencing them. Convict Moscardini Giovanni Pietro submits that he has remained in custody for about 7 months and convict

NCB Vs Moscardini Giovanni Pietro & Other

Rebernik ULA submits that she has remained in custody for 7 weeks and 3 days in the present case.

5. As per the case of the NCB, 720 gms of hashish/charas was recovered from baggage of convict Moscardini Giovanni Pietro while both convicts were going to Goa from IGI Airport, New Delhi by flight no. 6E-335 of Indigo Airlines.

6. Ld. SPP for NCB Sh. P.C. Aggarwal has contended that appropriate sentence may be imposed on the convicts.

7. Ld. Defence Counsel however argued that both convicts belong to the poor strata of the society and they got involved in the present case due to extreme poverty. It is stated that recovery of contraband was not of commercial quantity and it was of intermediate quantity. The convict Moscardini Giovanni Pietro has already remained in custody for about 7 months. He has clean antecedents. It is stated that convict is a resident of Italy. It is contended that during trial, mother of convict has expired. The convict is facing trial for the last four years. After grant of bail, he has appeared in the court on each and every hearing. In regard to other convict Rebernik ULA, it is stated that she is suffering from neurological problems and she has fallen down on ground in an unconscious condition on number of occasions, once in AIIMS and once in Primus Super Speciality Hospital. Medical documents are also furnished. It is stated that she has remained in custody for 7 weeks and 3 days. It is contended that no recovery was effected from convict Rebernik ULA. During period of trial, her father and grandmother have expired. It is stated that only her mother is remaining in her family who has also suffered heart stroke last year. Certain medical documents were also produced on record in regard to the ailment of her

NCB Vs Moscardini Giovanni Pietro & Other

mother by Sh. Jaka Miklavcic, Minister Plenipotentiary, Embassy of the Republic of Slovenia who submitted that he has received the same from mother of convict through Ministry of Foreign Affairs. The convicts were not previously involved in any other case. The convicts undertake not to indulge in any illegal activity in future.

8. A letter dated 21.01.2019 written on behalf of Jozef Drofenik, Ambassador, Embassy of the Republic of Slovenia is also filed wherein it has been submitted that convict Rebernik ULA and her mother both were having health issues and convict was getting treatment for her neurological problem even in her country Slovenia prior to her arrest in the present case. The Embassy has also produced certain medical documents pertaining to the convict and her mother.

9. I have given careful consideration to the submissions made by the Ld. Counsels. Dealing with the issue of sentencing, the Hon'ble Supreme Court in another case titled and reported as **Karamjeet Singh Vs. State (Delhi Admn.) (2001) 9SCC 161** has made the following observations:

Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in

the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

10. The aforementioned judicial dicta therefore makes it clear that the sole purpose of punishing an offender is not retribution alone and that the courts while sentencing an offender must make an attempt, within the parameters of the law, to afford an opportunity to the offender to reform himself/herself and lead the life of a normal, useful member of society. In the present case, both convicts have no previous criminal antecedents and it does appear from the totality of the attendant circumstances and material on record that they are not hardened criminals. They might have been forced due to their economic condition to indulge in the illegal trafficking of controlled substance. No doubt poverty is not a justification for commission of crimes but in the considered opinion of this court, imposing a harsh sentence will also not subserve the interests of justice. They being foreign nationals

NCB Vs Moscardini Giovanni Pietro & Other

are unnecessarily liability on our jail and they are required to be deported back to their countries. The recovered contraband is not commercial quantity. Thus taking into consideration the nature of offences, social as well as economic status of the convicts, the reason for which they appear to have committed the offences, their conduct and submissions made on behalf of Embassy official, medical condition of convict Rebernik ULA, this court hereby sentences both convicts to the period already undergone by them and to pay a fine of Rs. 1,00,000/- (One Lakh) each and in default thereof to undergo simple imprisonment for a period of three months with direction to immediately deport them to their countries following entire procedure and legal provisions in this regard. NCB to take all steps in this regard. Fine not paid.

11. Since, they have been convicted by this court, they are required to be deported back to their countries. At this stage, Sh. Jaka Miklavcic, Minister Plenipotentiary, Embassy of the Republic of Slovenia has undertaken that Embassy concerned will take all steps for deportation of both convicts to their countries at the earliest. As requested, let copy of the order be also sent to FRRO for making compliance in this respect.

12. On the request of Ld. Defence Counsel jamatalashi articles pertaining to both convicts be handed over to FRRO.

13. Both convicts are directed to furnish bond U/s 437 A Cr. PC in sum of Rs. 50,000/- each with one surety in the like amount. Both convicts seek some time for furnishing bond U/s 437 A Cr. PC as well as depositing of fine. As requested, put up for same on 14.02.2019 at 2 PM.

14. The case property, samples and concealing material stand confiscated to the

NCB Vs Moscardini Giovanni Pietro & Other

NCB to be disposed of as per rules.

15. Copy of this judgment and sentence be given to both convicts.

**Announced in the open Court
on this 06^h day of February, 2019**

**(Sudesh Kumar II)
Special Judge: NDPS/New Delhi**