

NCB Vs Krishna Murthy Doreswmy

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

**Case No. SC/8961/16
NCB Vs Krishna Murthy Doreswmy**

29.08.2018

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

Accused present on bail with Ld. Counsel Sh. Ranjay N.

1. In this case, PW 1 Rajesh Kumar (Inspector, CISF), PW 2 Prashant Kumar, (Assistant Chemical Examiner, CRCL), PW 3 Ajay Dahiya (IO), PW 4 Manoj Kumar (Constable, CISF), PW 5 Vishwanath Tiwari (IO), PW 6 Jai Kishan (superintendent), PW 7 K.M. Varshney (Deputy Director, Central Forensic Science Laboratory), PW 8 Pradeep Singh (IO) are already examined and discharged. Today, PW/Malkit Singh is present, however, at the very outset, Ld. Counsel for accused submits that accused wants to plead guilty for the offences charged with.

2. Perusal of the file reveals that this accused Krishna Murthy Doreswmy is facing trial for the contravention of rule/order U/s 9 A and offence punishable U/s 25 A r/w section 28 of NDPS Act.

3. It is stated by Ld. Defence Counsel Sh. Ranjay N. that the accused wants to plead guilty and he is prepared to face all the consequences and his statement may be recorded. Court has granted sometime to the accused to reflect upon his decision and he has stated before the court that he wishes to stick by his decision to plead guilty.

NCB Vs Krishna Murthy Doreswmy

4. In view of the same, statement of accused Krishna Murthy Doreswmy has been recorded separately in which he has pleaded guilty. He has also mentioned about the circumstances in which the offence was committed and the mitigating circumstances which the Court may take into consideration while sentencing him. He submits that he has already remained in custody for 150 days in the present case.

5. As per the case of the prosecution, on 27.07.2013 at about 2000 hours at IGI Airport, Terminal 3, New Delhi, the accused attempted to transport 4.750 kg of ephedrine, a controlled substance from New Delhi to Malaysia via Malaysian Airlines via flight no. MH-191 by carrying the same in his luggage and the said amount of ephedrine was recovered from his luggage.

6. In view of the voluntary plea of guilt of the accused Krishna Murthy Doreswmy, he is convicted for the contravention of rule/order U/s 9 A and offence punishable U/s 25 A r/w section 28 of NDPS Act.

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

8. Ld. Defence Counsel has argued that the convict was continuously on bail in the present case and he was appearing on each and every date of hearing. It is contended that the convict belongs to the poor strata of the society and he got involved in the present case due to extreme poverty. He is 34 years of age and a married man. He has the responsibility of wife and two children (one daughter and one son). It is stated that wife of convict is suffering from TB. His father has expired. He has also the responsibility of old mother aged about 62 years

NCB Vs Krishna Murthy Doreswmy

suffering from various ailments. He was working as a 'cab driver'. The convict was only a carrier. Ld. Counsel for convict prays for mercy and requests that a lenient view may be taken. The convict was not previously involved in any other case. The convict undertakes not to indulge in any illegal activity in future.

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 reformative. 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 reformative 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,

NCB Vs Krishna Murthy Doreswmy

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, the convict has no previous criminal antecedents and it does appear from the totality of the attendant circumstances and material on record that he is not a hardened criminal. He might have been forced due to his 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. Also, the substance in question is neither narcotic drug nor psychotropic substance but it is a controlled substance as defined under Section 2 (vii) (d) of the NDPS Act. Rigour of Section 37 of the NDPS Act is not attracted in the present case. No minimum punishment has been prescribed for the possession of the aforesaid contraband substance. Thus taking into consideration the nature of offences and social as well as economic status of the convict and the reason for which he appears to have committed the offence, this court hereby sentences the convict Krishna Murthy Doreswmy to undergo rigorous imprisonment for the period already undergone by him and to pay a fine of Rs. 50,000/- and in default thereof to undergo simple imprisonment for a period of one month. Fine not paid. Benefit of

NCB Vs Krishna Murthy Doreswmy

section 428 Cr. PC be given to convict.

11. In view of the provisions of Section 437 A Cr. PC, convict Krishna Murthy Doreswmy is directed to furnish bond in a sum of Rs. 30,000/- with one surety of like amount. Convict seeks some time for depositing fine amount as well as furnishing bond U/s 437 A Cr. PC. As requested, put up for same on 18.09.2018 at 2 PM. Witness present stands discharged.

12. The case property, samples and concealing material stand confiscated to the NCB to be disposed of as per rules.

Copy of this judgment and sentence be given to the convict.

**Announced in the open Court
on this 29th day of August, 2018**

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