

VIJAY PANDEY

V.

STATE OF UTTER PRADESH

(Maraal langjabagi hayjaba No. 2019 gi 1143)

JULY 30, 2019

[ASHOKA BHUSHAN AMASUNG MAVIN SINHA, JJ.]

Narcotic Drugs and Psychotropic Substances Act, 1985 - ss. 8, 15 - Waayel chatthariba waathok madudi waakatlibasina kaani kilo 10 purammi - waakalibna yetli madudi mahaakpu laanna cennahanle - NDPS Act ki u/ss. 8, 15 Awaangba Waayelshangna waakatlibabu phadok pire - Awaangba Waayelshangna maraal leirabadugi phadoktu chumle haaire - Haaijabada, waarep loure: Thijinbaduda lamdamdudagi maningtamba mitna uhouba amatta yaode amasung mitna uhouba loinamak pulis ophisaar ngaktani - Mi leinaba mapham amada maningtamba mitna uhouba mi amatta phangdabagi maram shandokna taakpa leite - Makhatana phakhiba pottugi sharuk kharagi chaangyengbagi waarol phanglabasu, waakatlibasidagi phakhiba pottugi sharukki mashaktudi aroiba oina lepthoktri - Phibhamshingsida, chaangyeng touraba pottugi sharuktu mayaai kaaba potlam oirammi haiduna chaangyeng toubagi waarol ama puthokpakhtana achumbani haaiba waaroishin maduna oiba yaaroi - Phaakhiba pottu amasung chaangyeng tourabadu amaga amaga mari leinaba taai - Asumna, makhaagi waayelshangshingna phaadok piribasi asum chatthaba yaaroi amasung maramduna chatnaba yaade.

Haijaba yaahali, Waayelshang

Waarep loure: 1. Ayuk anganbada waakatlibagi thongjinda phaabagi thabaktu thokkhibani. Khunganggi mi leinaba mapham amada, pulisna maningtamba mitna uhouba mi amatta phangba ngamkhide haaibasi thaajabada luna thok-i. Awaangba Waayelshangna, thiba humba matamda pot phangbagi ayiba waarol shemshaaba yaaode khanglabasu amasung Narcotic Drugs and Psychotropic Substances Act, 1985 gi Section 50 gi makhaada phaarabasu, madugi maramgidamak puliski mitna uhoubadugi washaklaga piba waaroldu matikchaare haaina mot pi. Chaangyenggi Waaroldu phanglabasu, waakatlibadagi phaakhi haairiba potki sharuktugi

mashaktu waayel chattharibana waaroishin oina puthoktri. [Waareng kaatup 5] [776-D-F]

2. Houjikki waaphangnabasida pharaba potki sharuktuga waakatlibadagi phabani haairibaduga waayellibana mari leinahanba ngamdabasina waaphangnariba asida phaaraba potki sharuktu puthokpa ngamdre haairibaduga khetnaba leihandre. Phibhamshingsida chaangyeng touraba pottugi sharuktu mayaai kaaba potlam oirammi haaiduna chaangyeng toubagi waarol ama puthokpakhaktana achumbani haaiiba waaroishin maduna oiba yaaroi. Phaaraba potki sharuk amsung chaangyeng touraba aduga mari leinahanba taabani. Waayel Loishangna maraal leire haairaba amasung Awaangba Waayel Loishangnasu achumbani haairabasi chummi haina loubu yaade amasung maramduna chatnaba yaade. Waakatlibasi maraal leite. [Waareng kaatupshing 8,10] [777-F; 778-E-F]

Mohan Lal v. State of Punjab AIR 2019 SC 3853 :

2018 SCR 1006; *Vijay Jain v. State of Madhya Pradesh*

(2013) 14 SCC 527 : [2013SCR 293 ; *Ashok alias Dangra*

Jaiswal v. State of Madhya Pradesh (2011)5 SCC 123 : [2011] 4 SCR 253 - mateng oi.

Waaphangnaba waayel pathaap mari makhong

[2018] SCR 1006	mateng oi	Waareng kaatup 7
[2013] 4 SCR 293	mateng oi	Waareng kaatup 8
[2011] 4 SCR 253	mateng oi	Waareng kaatup 9

CRIMINAL APPELLATE JURISDICTION : Maraal leibagi haaijaba mashing. 2019 gi 1143.

Maraal leibagi haaijaba mashing. 2007 gi 7351 da Allahabadta leiba Hingh Court of Judicaturena cheichat 10.10.2018 gi waayel amasung yaathangdagi.

Tripurari Ray, Balwant Singh Billowria, Suresh Kumar Sharma, Parveen Kumar, Praffula Kumar, Rajesh Singh, waakatlibagi ukilshing.

Sanjay Kumar Tyagi, Ajay Kr. Prajapati, A.K. Pamdey, Yogesh Pachouri, Sandeep Singh, Paaokhum pigadabagi ukilshing.

Waayelshanggi waareptu **NAVIN SINHA, J** na laothokkhi.

1. The Narcotic Drugs and Psychotropic Substances Act, 1985 (masigi makha tarakpada "NDPS Act" haaina) ki Sections 8 amasung 15 gi makhaada waakatlibana mahaakpu maraal piba amasung cheirak piba, NDPS Actki Section 31 gi makhaada mahaakpu chahi 15 gi miyaat loinana shentek oina lupa 1,50,000/- cheiraak pibabu yetli.

2. Kilo 10 gi kaani phaagatpa mataangduda waakatlibasina mahaakki makhut yetta yaam plastik peket ama purammi haairi. Thijinbaduda kanagumba mitna uhouba maningtamba mioi amatta leukai aduwaaaidagi yaaode amasung mitna uhouba loinamak pulis ophisielshingkhaktani.

3. Waakatlibagidamak lepliba khangheiraba lamjing lamtaakpana lanna maraal shibabani haairi madudi mahaakna mayumdagi makhong thaangdorakpada mahaakpu phabani . Mi leinariba leukai amadagi mitna uhouba mi amatta phangdabagi maram shandokna takpa leite. NDPS Actki Section 50 chanade. Waayel loishangda puthokliba potki sharuktu waakatlibadagi phaakhiba pottuga maannabani haaina waayellibana khudam piba ngamdre.

4. Steitkidamak lepliba khangheiraba lamjing lamtaakpana asumna thamli madudi waakatlibasigi houkhibada anirak NDPS Actki makhaada maraal leikhibagi puwaari lei amasung mahaakse adum aaraanba touba mini. Section 50 asi chanei. Waayelliba Waayelshangna waayelshangda puthokliba potki sharuktu waakatlibadagi phanglibasiga maannei haaina masigi penjabadu ishille. Thokkhibashingduna waakatlibasida karigumba amaangba amasung ashokpa pikhide.

5. Eikhoina waarolshingdu amamamta oina khannare. Phabadu ayukki pung 06.40 da waakatlibasigi thongjindani. Khungganggi mi leinariba leukai amada, pulisna maningtamba mitna uhouba mioi amatta phaaoba phangba ngamde haaibasi eikhoina thaajabada luna thok-i. Mitina uhouba oiyu haaibada yaadaba mi amatagi mamingsu pande. Awaangba Waayelshangna, NDPS Actki makhaagi Section 50 gi makhaada thijinba amasung phaagatpa matamda pot phaagatpagi ayiba waarol amatta shemshaaba yaaodaba khanglabasu, madugidamak puliski mitna uhouba waashaktuna piba khudamdu matik chare

haaina mot pi. Chaangyeng toubagi Waarol phanglabasu, adumoinamak waakatlibadagi phabani hairiba pottugi sharukki mashakti waayellibana waaroishin oina chap chaana lepthokpa toudri.

6. Waayelshangda pothokliba mangondagi phaabani haaina lepthoktriba potki sharuksigi maramda maraal leibani hairibasina yaaningdaba phongdokli. Waayel Loishangna mot pi madudi "Uttar Pradeshki potchei thamphamshinggi phibhamsi yaamna nungngaitaba maongda leire amasung angakpa amasung mitna yengningdaba kaya yao-i" Puthokkhiba plastik pekettu yaamna hanthaba thakkini amasung pottugi mathakta maraal leire haairiba misigi maming iriba muktusu paaba thoktare amasung matamgi matung inna mutkhre. Aduoijarabasu, waakatlibasigi maayokta shiriba maraalshingsi mitna uhoubashingna achumbani haaina khudam pirabana, waakatlibasidagi phaabani haaina puthokliba potki sharuktu waaroishin oina mashak leppa ngamdrabasu madu maruoide.

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[NAVIN SINHA, J.]

Laaibakthibani, Awaangba Waayelshangna thoudoksigi waaphamsimadi suknei neinaramdre. Cheiraak pinbagidi houkhraba maraal laaothokkhiba amagi thoudoktugi achumbashingdu chaanaba yaai adubu maraal pibagi yumphamdi madumakna oiba yaaroi.

7. ***Moham Lal vs. State of Punjab***, ta AIR 2018 SC 3853, asumna yeng-i:

"10. General principle of criminal jurisprudence ka mannadana maraal leiba mini haaina khudam uttrabadi maraal shiraba midu maraal leite lougani, Section 35 amasung 54 gi makhada NDPS Actta reverse burden of proof yaaori. Maraal ama shiba mikuptuda amasung pottu phaagatlakpagi F.I.R.da iduna phongdoklibadu waayel pathaapki kaanglonga chaanare, waayenba hek hourakpadagi chummi haaibagi khudam changdamshingdu maraal shiraba mioduda hongkhi, haaina khangbadi makhaatana waayellibana karigumba ama thamba nattraga khudam changdam puthokpa yaodana yaaroi. Khudam chaangdam puthoktrabadi achumba oiramgani haaibadu atoppa ama oiba yaai. Section 35(2)na piri madudi achumba amabu khudam changdam

puthoktuna masibu maram chaaba chingnaba yaaba leihandana achumbani taaklabadi madu chumle haiba yaai amasung achumbadu oiramba yaabana oiramdaba yaabadagi hellamgani thaajaraba waayellibagi waakhalda phaoriba thaajabagi chaangduna nattabida (preponderance of probability). NDPS Actki hakchanba kaanglonshing, Section 37 asigumba, khwaaidagi taabada chahi 10 gi phadok, matam kakthabagi waarol yaaodaba, thijallaba matungda chingnaningai oiba yaaodana prima facie case ama pannaba waayenbagi toupham thokpadu toudana tokkanu, masigi matungdada chummi haaibagi khudam changdamshingdu maraal shirabaduda thangdokkani. Waayenbagi waaphangnabadu achumbadu oiramba yaabana oiramdaba yaabadagi hellamgani thaajaraba waayellibagi waakhalda phaoriba thajabagi chaang (preponderance of probability)gi makha ponna toubadi yaahanba yaade."

8. Houjikki waaphangnabasida phaaraba potki sharuktuga waakatlibadagi phaabani haairibaduga waayellibana mari leinahanba ngamdabasina waaphangnariba asida phaaraba potki sharuktu puthokpa ngamdre haaibaduga khetnaba leihandre. Phibhamshingsida chaangyeng touraba pottugi sharuktu mayai kaaba potlam oirammi haaiduna chaangyeng toubagi waarol ama puthokpakhaktana achumbani haiba waaroishin maduna oiba yaaroi. Phaaraba potki sharuk amsung chaangyeng touraba aduga mari leinahanba taabani. ***Vijay Jain vs. State of Madhya Pradesh***, (2013) 14 SCC 527, gi waarolshing makhaagi asumnani amasung khannabada chaanaba oigani:

"10. Amaromdana, *Jitendragi* waaphangnabada Waayelshang asigi waayeldu paabada, Waayelshang asina ashigumba mityeng ama yengngi haaibasi eikhoina khangngi madudi NDPS Actki makhaada araanba toubami amagi waayel chatthabada, waayel chatthanabagidamak achumba khudam chaangdam chang-i madudi maraal shiriba mioisina paairambadagi phaaraba araanbani hairiba kaanglonna yaadaba potshing amasung masigi waaphamsi achumbani taaknaba khwaidagi phaba khudam chaangdamdi waayellingei matamda puthokpani, phaaraba potshingdu potshing oina amasung maphamduda phaakhre haaiba araanbani hairiba kaanglonna yaadaba potshingdu puthoktre amasung waayellibana kaanglonna yaadaba potshingdu puthokpa ngamdabagi sugaaina haaide, maraal shiriba mioi adudagi potshingdu phaa haaibagi chinkhaktana khudam chaangdam pibaanadi NDPS Actki makhaada kaanglonna yaadabani haibasi akhannana mitna uhouba panchna yaaraktrabada matik chaaroiye. Amukhanna, Ashokki (mathakta pankhraba) waaphangnabada, masigi Waayelshangsina khangle madudi

maraal shiriba mioi asina paairambadagi phaaba araanbani haairiba kaanglonna yaadaba pawdardu utthoknaba pot oina waayel chattharibasigi mamaangda puthokte amasung masibu puthoktabagi maram sugaaina taakpasu leite amasung maramduna masigi Waayelshangsina waarep loure madudi phorensikki waarolduga waakatlibana paairambadagi phaabani haairiba potshaktuga mari leinahannaba khudam chaangdam amatta leite."

9. *Ashok alias Dangra Jaiswl vs. State of Madhya Pradesh*, (2011) 5 SCC 123, asumna yeng-i.

"12. Aroiba adubu marudi oiba, maraal shiriba mioi asina paairambadagi phaaba araanbani haairiba kaanglonna yaadaba pawdardu, waakatlibasi yaaona waayelliba waayelshangsigi mamaangda keidoungeidasu puthokkhide utnaba pot oina amasung amuk hanna masibu puthoktabagi maram sandokna taakpasu leite. Asumna, phorensikki waarolduga waakatliba natraga atoppa maraal shiribana paairambadagi phaabani hairiba potshaktuga mari leinahannaba khudam chaangdam amatta leite."

"10. Eikhoi, maramduna, waakatlibasibu maraal pibadi chummi haiba ngamde. Waayelliba Waayelshangna maraal piba amasung Awaangba Waayelshangna chummi haairibashingsi matung taana chthahanba yaaroi amasung maramduna chatnaba yade. Waakatlibasi maraal leite. Atoppa waathokshingda chennadrabadi mahaakpu khudaksidagi thadoknaba khanghalli.

11. Waakatpa yaahalle.

Ankit Gyan

Waakatpa yaahalli.