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CASE COMMENTARY ON BASHEER @ N.P.BASHEER VERSUS STATE OF KERALA

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ABSTRACT

Narcotic drugs and psychotropic substances act, 1985 was amended in 2001. A new concept of commercial quantity was introduced in this act by this amendment which protects drug addicts. The large number of case found under this act was about drug addicts and not traffickers of narcotic drugs and psychotropic substances. The NDPS Act, 1985 contemplates severe and deterrent punishment. The bail is

also not granted easily. The foresaid amendment came into force on 2nd October, 2001. The Section 41(1) of amendment act 2001 checked the constitutional validity by not providing the applicability of new act for cases under trail in appeal.

KEYWORDS: NDPS Act, Amendment, Section 41(1), High Court, Appeal Cases, Constitution, Article 14

I. INVOLVED ACTS AND SECTIONS	<u>A.Constitution Of India</u> 1.Article 20(1) 2.Article 14 <u>B.Narcotic Drugs and Psychotropic Substance Act, 1985</u> 1.Section 41(1)
II. JUDGEMENT CASE TITLE	BASHEER @ N.P. BASHEER VS STATE OF KERALA
III. CASE NUMBER	Appeal (crl.) 1334 of 2002
IV. JUDGEMENT DATE	9 February, 2004
V. COURT	Kerala High Court
VI. QUORAM	K.G. Balakrishnan, B.N. Srikrishna.
VII. AUTHOR AND CITATION	Srikrishna, J JUDGMENT WITH CRIMINAL APPEAL Nos.1335-1337 OF 2002 AND CRIMINAL APPEAL Nos.28-29,708,741 & 613 OF 2003

I. INTRODUCTION

The Narcotic Drugs and Psychotropic Substances Act (NDPS) is an Indian law that was

enacted in 1985 to combat drug trafficking and drug abuse in the country. The Act provides for strict penalties for offenses related to narcotic drugs and psychotropic substances, including imprisonment and fines.

In 2001, the NDPS Act was amended to introduce a more comprehensive approach to drug control. The amendment included provisions for the establishment of special courts for the speedy trial of drug-related cases, the creation of a National Fund for the Control of Drug Abuse to finance rehabilitation and treatment programs, and the inclusion of new psychotropic substances in the list of prohibited substances. The amendment also allowed for the forfeiture of property acquired through drug trafficking and expanded the powers of law enforcement agencies to investigate and seize assets related to drug trafficking. Overall, the 2001 amendment strengthened the NDPS Act's ability to combat drug trafficking and abuse in India.

The NDPS Act has been amended thrice (1988, 2001, 2014) which changed the scope and direction of the act.

II. BACKGROUND OF THE JUDGEMENT:

The 2001 Amendment was to rationalise the punishment for drug addicts and traffickers in relation to the quantity they have. After this amendment the drug addicts can get less punishment and can get bail. Before this amendment the drug addicts was not treated different from illegal drug traffickers both were punished with imprisonment without getting any bail till they prove them innocent. The problem arose with the amendment was the non applicability of this new amended act to the appeal cases under trail.

III. FACT

Many cases were file in appeal to the High Court by the persons who where convicted by Trail court under NDPS Act,1985 and sentenced to rigorous imprisonment of 10 years and fine of Rs. One lakh. The fact and contentions of each case is different. Their appeals where pending in the High Courts on 2nd October, 2001when the new Act came into force.

By Section 41 of NDPS ACT, Parliament has declared its intention to apply the amended provisions of the Act to:

- (a) All cases pending before the court on 2nd October, 2001;
- (b) All cases under investigation as on that date; and provides that these categories of cases shall be disposed of in accordance with the provisions of the 1985 Act as amended by the Act of 2001.

In other words, the benefit of the rationalised sentencing structure would be applicable to these categories. The proviso, however, makes an exception and excludes the application of the rationalised sentencing structure to cases pending in appeal.

IV. ISSUE

Whether Section41(1) of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 is constitutionally valid ?

V. ARGUMENTS FAVOUR OF APPELENT

- A. Retrospective amendment of a criminal statute would be hit by Article 20(1) of the Constitution subject to the exception that where the amending statute mollifies the rigour of law, the benefit of the mollification shall be available to the accused, whose cases are pending on the date on which the amending provision comes into force.
- B. In as much as the proviso to Section 41 of Act 9 of 2001 denies them the benefit of the rationalised structure of punishment introduced by the Amending Act of 2001 should also be made available to all pending cases (including appeals) in Courts on the date of the amendment coming into force., by putting them in a different category, the said proviso is unreasonable and violative of the equality right guaranteed by Article 14 of the Constitution, resulting in hostile discrimination.

- C. In reality, there could be no difference between cases pending before the Courts or cases pending in appeal, since an appeal is the continuation of the trial.
- D. The classification made by the legislature is unreasonable, not based on any intelligible differentia having rational nexus with the rationale or objectives of the amending Act.

VI. ARGUMENTS FAVOUR OF RESPONDENT

- A. In view of learned Additional Solicitor General, this authority does not have a bearing on the issue debated before us for two reasons namely:
1. The Amending Act there itself had Section 25, which was given overriding effect over anything that had been done under the previous Act;
 2. This authority also emphasises the principle of extending benevolent provision of the Amending Act to pending cases, since that was the intention of Parliament.

VII. JUDGEMENT

- A. Section 41 (1) of the Amending Act 9 of 2001 is Constitutional and is not hit by Article 14.
- B. Consequently, in all cases, in which the trials had concluded and appeals were pending on 2.10.2001, when Amending Act 9 of 2001 came into force, the amendments introduced by the Amending Act 9 of 2001 would not be applicable and they would have to be disposed off in accordance with the NDPS Act, 1985, as it stood before 2nd October, 2001.
- C. Since there are other contentions of law and fact raised in each of these cases, they would have to be placed before the appropriate Benches for decision and disposal in accordance with the law.

VIII. CONCLUSION

Narcotic Drugs and Psychotropic Substance Amendment Act, 2001 is constitutionally valid and the case under trail in appeal is not applicable to the new amended act does not violate Article 14 of the Indian Constitution.

IX. RELATED CASE LAWS

(Cited Judgements)

- A. Ram Singh v. State of Haryana, 2003 (1) EFR 444
- B. Ramesh v. State of Madhya Pradesh and Anr., (Writ Petition 537 of 2003 decided on 25.4.2003 by Division bench of Deepak Mishra and A.K. Srivastava, JJ.)
- C. Ratan Lal v. State of Punjab, AIR 1965 SC 444
- D. T. Barai v. Henry Ah Hoe and Anr., AIR 1983 SC 150
- E. State of AP & Ors. V. Nallamilli Rami Reddy & Ors., (2001) 7 SCC 708
- F. Akhtari BI (Smt.) v. State of M.P., (2001) 4 SCC 355
- G. K.S. Paripoornan v. State of Kerala & Ors., (1994) 5 SCC 593
- H. R. Rajagopal Reddy (Dead) by LRs & Ors. v. Padmini Chandrasekharan (Dead) by LRs, (1995) 2 SCC 630
- I. Smt. Dayawati & Anr. v. Inderjit & Ors., (1966) 3 SCR

X. REFERENCE

- A. Bare act – Constitution of India
Bare act- Narcotic substance and Psychotropic Substance Act, 1985