

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 332 of 2002**

- Nihar Kant Barman

----appellant

Versus

- State Of C.G.

---- Respondent

For appellant	:	Ms. C.K. Navrang, Advocate.
For Respondent/State	:	Mr. Akhilesh Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgement

17/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20-2-2002 passed by the Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity NDPS Act) and Additional Sessions Judge, Durg in NDPS Special Case No. 20/2001 whereby and whereunder learned trial Court after holding the appellant guilty for illegally possessing 5.5 kg of contraband article Ganja convicted him under Section 20(b)(i) of the NDPS Act (prior to the Amendment in Section 20 as substituted by Act No. 9/2001 with effect from 2-10-2001) and sentenced to undergo RI for 3 years and to pay a fine of Rs. 5,000/- , in default of payment of fine to further undergo additional RI for one year.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality
3. As per case of the prosecution, on 22-3-2001, P.W. 8 T.R. Nagvanshi, Sub Inspector , PS Rajhara received information from informant that appellant is keeping contraband article Ganja in his house. The IO recorded the information vide Ex. P-1 before panch witnesses and also recorded it in the Rojnamcha. He gave the Mukhbir information panchnama Ex. P-1 to Nandkishore for submitting to his superior officer SDOP, Balod. On account of no possibility of any gazetted officer to reach on the spot immediately and possibility of concealment of ganja by the appellant, he along with police party proceeded to the spot. His Ravanagi was also recorded in Rojnamcha

Sanha No. 1445. He gave notice Ex. P-8 to appellant under Section 50 of the NDPS Act informing his legal right that he may be searched before any Gazetted Officer or Magistrate and if he wishes, he may give his search to P.W. 8 T.R. Nagvanshi. The appellant consented for search of his house to be made by IO T.R. Nagvanshi. Thereafter the appellant conducted search of entire police party through panchnama Ex. P-2. Nothing objectionable substance was found with the police party. Thereafter he made search of the house of the appellant and recovered ganja in his house in a hidden condition in a pot. The house search panchnama was prepared vide Ex. P-3. Thereafter before witnesses, said ganja was physically examined and presence of ganja was confirmed vide Ex. P-4. The ganja recovered from possession of the appellant was weighed which was found 5.5 kg. He prepared taul panchnama Ex. P-5. Out of the said ganja two sample packets of 30 gm. each were prepared. Sample packets and remaining ganja and earthen pot was duly seized and sealed vide seizure memo Ex. P-7. Thereafter, the IO returned along with appellant and the seized material to police station Rajhara and lodged FIR Ex. P-9 against the appellant at crime No. 85/2001. The appellant was duly arrested vide arrest memo Ex. P-10. Spot map was prepared by the IO vide Ex. P-11. The samples duly sealed was sent for chemical analysis to FSL Raipur vide Ex. P-12 which was received at the laboratory vide Ex. P-13. After necessary chemical analysis presence of ganja was confirmed in the samples vide report Ex. P-14. After completion of investigation, charge sheet was filed before the Special Judge, NDPS Act, Durg on 18-4-2001.

4. The appellant is charged for the offence under Section 20(b)(i) of the NDPS Act. Appellant denied the charges. Prosecution examined 8 witnesses to prove the guilt of the appellant before the trial Court.
5. Statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (in brevity 'Code') was recorded in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
6. The appellant also examined one defence witness D.W. 1 Meera Ghose. As per this witness, the appellant used to live at Bhanupratappur though he is having a house at Dalli Rajhara.
7. After providing opportunity of hearing to the parties, learned Special Judge convicted and sentenced the appellant as aforementioned.
8. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.

9. Learned counsel for the appellant submits that she is not contesting the appeal on the point of conviction passed against the appellant. She is confining her argument only on the point of quantum of sentence. The incident is about 14 years old. Appellant was first offender having no criminal antecedents of similar nature shown in the charge sheet. He has not involved himself in similar activity. He has already remained in jail from 22-3-2001 till 20-2-2002 and even thereafter he continued to be in jail for serving sentence till his sentence was suspended and he was released on bail till pendency of appeal vide order dated 9-5-2002. Even after order of granting bail, he remained in jail till he furnished bail bond thereby he has already served a part of sentence of 405 days. There was no minimum sentence prescribed and as he has not involved in the similar offence after the incident, looking to the entire facts and circumstances as he was the first offender, he will not commit any other likewise offence in future it is prayed on behalf of the appellant that he be punished for the period already undergone by him.
10. On the other hand, learned counsel for the State opposed the arguments advanced on behalf of the appellant, supported the judgment and argued that looking to the quantity of ganja seized from the appellant, the trial Court has rightly convicted and sentenced the appellant. Hence the appeal being devoid of substance may be dismissed.
11. In order to appreciate the arguments advanced on behalf of rival parties, I have perused the evidence adduced by both the parties.
12. As regard question of conviction, upon perusal of entire evidence on record and judgment of the Court below and since the appellant is not contesting this appeal on merit for conviction, I do not find any illegality or infirmity in the finding of the trial Court. Therefore the order of conviction under Section 20(b)(i) of the NDPS Act passed by the trial Court is hereby affirmed.
13. So far as quantum of sentence is concerned, appellant has been sentenced to undergo RI for 3 years with a fine of Rs. 5,000/-. Under Section 20(b)(i) of the NDPS Act, the trial Court may impose sentence upto 5 years with fine but no minimum sentence is prescribed under this section prevailing at the time of incident. The incident is about 14 years old. For all these 14 years, appellant has been facing and contesting trial. The appellant is conducting contract for construction. He was having no criminal history regarding illicit possession of ganja shown in the charge sheet and as submitted by learned counsel for the appellant, after this incident also, the appellant has not involved himself in similar activity. He has served a jail sentence of 405

days. Since no minimum jail sentence under Section 20(b)(i) of the NDPS Act (prior to the Amendment in Section 20 as substituted by Act No. 9/2001 with effect from 2-10-2001) is prescribed, I am of the view that it would be just and proper to sentence the appellant for the period already undergone by him.

14. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 20(b)(i) of the NDPS Act is affirmed. Fine sentence is also maintained. However substantive jail sentence awarded to the appellant is modified and instead of RI for three years, the appellant is sentenced to the period already undergone by him.

15. The appellant is reported to be on bail. His bonds shall continue for a further period of six months as per provisions of Section 437-A of the Code.

JUDGE

Pathak