

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 128 of 2010

1. Pawan Kumar Bareth S/o Arjunlal Bareth, aged about 30 years, R/o Village Tilaknagar, Champa, Police Station Champa, District Janjgir- Champa (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through Police Station Bamnidiha, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant – Shri A.K.Gupta, Advocate.

For Respondent – Shri Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

16/10/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04-01-2010 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Janjgir, District Janjgir-Champa (C.G.) in Special Criminal Case No.07/2009 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 1 Kg. 300 grams of psychotropic substance ganja, the cannabis, convicted him under Section 20 (b)(ii)B of the NDPS Act and sentenced him to undergo R.I. for 5 years and to pay fine of Rs. 5,000/-, in default of payment of fine to undergo additional R.I. for 6 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution on 01-04-2009, ASI posted in P.S. Bamhanidih B.P.Kaushik (PW-7) posted in the P.S. Bamhanidih received information from the informer that the appellant is in illegal possession of ganja and going towards Champa in a motorcycle. The Investigating Officer B.P.Kaushik (PW-7) recorded the information received by the informer and sent a copy to his superior official, called for the panch witnesses and along with Police staff and panch witnesses reached to the spot and he saw the appellant coming on a motorcycle, he stopped him and asked regarding his name and address and thereafter informed the appellant regarding his right to be searched before a Gazette Officer or Magistrate. After notice under Section 50 of the NDPS Act, the appellant gave consent to be searched by the Investigating Officer itself. Thereafter, the Investigating Officer searched the bag found in the motorcycle and in the possession of the appellant wherein he noticed some objectionable substance; on physical examination the same was confirmed as ganja. Thereafter, the Investigating Officer took the weight of the ganja, the weight of the said ganja was 1 kg. 300 grams, out of which 50 grams of ganja was taken out as sample. The sample and remaining ganja were duly sealed and seized. The motorcycle was also seized. The appellant was arrested and

after their return to the police station, the F.I.R. was lodged and the seized ganja and sample were deposited in safe custody of the police station in malkhana. The copy of the F.I.R., arrest memo were sent to the Special Court. The entire proceeding was duly informed to his superior official. The sample was sent for chemical analysis to F.S.L., Raipur. After chemical analysis, presence of ganja was confirmed. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). After completion of the investigation, charge-sheet was filed before the Court below. The learned trial Court framed charges for the offence under Section 20(b)(ii)(B) the NDPS Act. The appellant denied the charges and prayed for regular trial.

4. During the trial, in order to prove the guilt of the appellant, prosecution examined 8 witnesses in all. Statement of the appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

5. After affording opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

6. I have heard both the parties and perused the judgment impugned and record of the Court below.

7. Learned Counsel for the appellant submitted that after appreciation of the entire facts, he is not contesting the instant criminal appeal regarding judgment of conviction and also for

judgment of sentence of fine and he is confining his arguments only to the quantum of sentence. He further submitted that the appellant was in illegal possession of 1 kg. 300 grams of ganja and as per para 25 of the judgment of the Court below, as under trial, the appellant served sentence from 02-04-2009 to 23-07-2009 thereby he remained in jail for 3 months and 21 days; thereafter after pronouncement of the judgment dated 04-01-2010 he served the sentence till the order dated 09-04-2010 whereby and whereunder this Court ordered for suspension of sentence and granted bail to the appellant and after a few days of the said order, he had furnished the bail thereby he served the sentence in total for more than 6 months and 27 days. It is further submitted that there is no minimum sentence prescribed for the offence; the appellant was the first offender aged about 30 years at the time of incident, he will not commit any offence in future; therefore, he be given an opportunity and looking to the quantity of the ganja so seized he may be sentenced accordingly.

8. On the other hand, learned counsel for the State opposed the arguments advanced on behalf of the appellant and submitted that looking to the offence committed by the appellant, the trial Court has rightly convicted and sentenced the appellant, hence the appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

10. As submitted, learned counsel for the appellant after appreciation of the entire material available is not contesting the appeal for the judgment of conviction and also for fine sentence passed against the appellant. Even after perusal of the entire evidence and material available, I do not find any illegality or impropriety in the judgment of conviction and judgment of fine sentence; hence, the same do not require any interference.

11. So far as the substantive jail sentence is concerned, the appellant was awarded jail sentence of R.I. for 5 years; as he was in possession of 1 kg. 300 grams, barely 300 grams more than the small quantity, there is no minimum sentence prescribed for the offence, the appellant was the first offender, and also looking to the quantity of the ganja so seized and the fact that the appellant served the sentence for 6 months and 27 days till the bail order, even some more days spent for furnishing the bail bond before the Court below, in the considered view of this Court, the substantive jail sentence awarded to the appellant requires interference. After appreciation of the entire material, in the considered view of this Court, sentencing the appellant for the period already undergone by him would meet the ends of justice.

12. Consequently, the appeal filed by the appellant is allowed in part. The judgment of conviction and judgment for fine sentence passed against the appellant by the trial Court are hereby affirmed. So far as substantive jail sentence awarded to the appellant by the trial Court, i.e., R.I. for 5 years is concerned, the

same is reduced to the period already undergone by the appellant.

13. The appellant is said to be on bail. He be set at liberty forthwith. The bail bond furnished by the appellant shall be in force for a further period of 6 months as per requirement of Section 437-A of the Code.

14. The authorities are directed to realize the fine amount as per order of the trial Court. If it is not paid, the appellant be served with the default sentence till realization.

15. The appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE

