

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 959 of 2015

1. Sunil Singh S/o Late Ram Sagar Singh, aged about 45 years, R/o Village Bihat, P.S. Barouni District Begusaray Bihar.

---- Appellant

Versus

1. State of Chhattisgarh Through: Police Station G.R.P. Bilaspur, District-Bilaspur, Chhattisgarh

---- Respondent

For Appellant – Ms. Kiran Jain, Advocate.

For Respondent – Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

25/08/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 03-08-2015 passed by the Special Judge [under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'the NDPS Act')], Bilaspur, C.G., in Special NDPS Case No.03/2015 whereby and whereunder learned Special Judge after holding the appellant guilty for illicitly possessing 5 kg ganja, convicted the appellant for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 2 years along with fine of Rs. 20,000/-, in default of payment of fine, to further undergo additional RI for 4 months.

2. Conviction is impugned on the ground that without there being any 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 06-12-2014, at about 04.00 p.m. the IO, PW-6, SI, S.L.Navratn, received information from the informant that on platform

No.4 and 5 of Bilaspur railway station at Raigarh end a person is in possession of ganja keeping the same in a black green airbag. Thereafter, the IO requisitioned the panch witnesses. The information was duly recorded and and complied for informing the superior officer and thereafter the IO along with the panch witnesses and staff reached to the spot where they saw the appellant keeping a bag with him. After getting information regarding his name and address, the appellant was served with a notice under Section 50 of the NDPS Act regarding his legal right to be searched before Gazetted Officer or Magistrate. After notice, the appellant gave consent in writing to be searched before the IO itself. Thereafter, the airbag in the possession of the appellant was searched and the IO noticed illegal substance in the airbag which was confirmed as ganja after physical verification, the same was duly seized and sealed. Seized ganja was weighed and it was found to be 5 kg. Samples were prepared and also sealed. A railway ticket was also seized from the appellant. The IO prepared the spot map. After conducting investigation at the spot, the IO returned to the police station, lodged the FIR and registered the crime against the appellant. Thereafter, samples were sent for chemical examination. After obtaining report of the FSL, the charge sheet was filed before the Special Judge under the NDPS Act, Bilaspur, C.G.

4. The learned trial Court framed the charges against the appellant. The appellant denied the charges and prayed for trial.

5. In order to prove guilt of the appellant, prosecution examined 10 witnesses in all. No any deference witness was examined by the appellant. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the crime in question.

6. After affording opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.

8. Learned counsel appearing for the appellant submitted that, as instructed, she is not contesting the appeal for conviction part, she is only contesting the present appeal on the quantum of sentence. Learned counsel for the appellant further submitted that the appellant is the first offender with no previous criminal history; he was found in the illegal possession of 5 kg. contraband article ganja; there is no minimum sentence prescribed for the offence under Section 20(b)(ii)(B) of the NDPS Act; the appellant is in jail since 8 months and 18 days, he will not commit any offence in future, therefore, he be given an opportunity to live as a law abiding citizen and prayed that he may be adequately sentenced.

9. On the other hand, learned counsel appearing for the State/respondent opposed the argument advanced on behalf of the appellant and submitted that as the appellant is a person from District Begusaraj, Bihar and he was caught hold at Bilaspur station along with 5 kg. of ganja. Looking to the quantity, no any explanation regarding his presence at Bilaspur and looking to his age, the trial Court rightly sentenced the appellant. Therefore, the appeal may be dismissed in toto.

10. For the purposes of appreciation of the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

11. The appellant is not contesting the instant criminal appeal on its merit regarding conviction part. Even otherwise, upon perusal of the entire evidence, I do not see any reason and any illegality or impropriety for interference in the judgment of conviction passed against the appellant by the trial Court. So far as fine sentence awarded by the trial Court is concerned, looking to the offence, it cannot be said that the same is on higher side or disproportionate. Consequently, this

Court do not see any scope for interference regarding the sentence of fine.

12. So far as the substantive jail sentence passed against the appellant is concerned, the appellant has been sentenced to undergo R.I. for 2 years; the appellant is the first offender; he prayed that he will not commit any other offence in future and he be given an opportunity; he is in jail since 8 months and 18 days to till date, looking to the entire facts and circumstances, in the considered view of this Court, the substantive jail sentence awarded to the appellant requires interference.

13. Consequently the criminal appeal filed by the appellant is hereby partly allowed. Conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. Fine sentence awarded to the appellant by the trial Court is also hereby maintained. However, substantive jail sentence awarded to the appellant is modified and instead of RI for 2 years, he is sentenced to undergo R.I. for 1 year including the benefit of set off and remission as per para 42 of the judgment of trial Court.

14. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge