

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1137 of 2012**

1. Sumanta Bhoi, S/o Gajraj Bhoi, aged about 22 years,
 2. Shrikant Kahar, S/o Rewa Kahar, aged about 25 years,
 3. Dara Kahar, S/o Podhora Kahar, aged about 36 years,
 4. Jashwant Bhoi, S/o Duboraja Bhoi (**Dead, name deleted**),
 5. Afwa Kahar, S/o Seeta Kant Kahar, aged about 22 years,
- All R/o Village Umagaon, P/S Kontamaal, District Boudh (Orissa)

---- Appellants**Versus**

State of Chhattisgarh through Officer in charge of the Police
Station Sarangarh District Raigarh (CG)

---- Respondent

For Appellants 1, 2, 3 & 5 : Shri Abhishek Saraf and Shri
Ravindra Sharma, Advocates

For State/Respondent : Smt. Shobha Kashyap, Dy.
Government Advocate

Respondent No.4 died during trial. His name is deleted.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****18/8/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.11.2012 passed by the Special Judge, (NDPS Act), Raigarh in Special Criminal Case No.7/2011, whereby and whereunder the learned Special Judge after holding

the 4 appellants, A1- Sumanta Bhoi, A2- Shrikant Kahar, A3- Dara Kahar & A5- Afwa Kahar guilty for illicit possession of psychotropic substance ganja, the cannabis in their own conscious possession in quantity of 12,200 gm, 5,250 gm, 2 kg and 3,950 gm respectively, convicted them under Section 20b(ii) B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act') and sentenced to undergo R.I. for 10 years and fine of Rs. 1,00,000/-, in default of payment of fine to further undergo R.I. for 3 years. The co-accused, Jashwant Bhoi died during trial, he was also found in possession of 2 kg of ganja. Hence, trial stands abated for died co-accused, Jashwant Bhoi.

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

3. As per case of the prosecution on 23.6.2011 at about 7.30 pm in village Timarlaga on a public road, all the appellants were found in possession of ganja in the bags which they were holding. As per information received from the informant, the Investigating Officer, PW5, K.L. Yadav, prepared a Search Panchanama under the relevant provisions. Thereafter along with Panch witnesses, the Police party reached to the spot, interrogated the appellants and proceeded further under the general and mandatory

provisions of the NDPS Act. The psychotropic substance as mentioned above was found from their physical and conscious possession; they were standing together, the Investigating Officer conducted the entire investigation, seized the material and after investigation charge-sheet was filed before the Court concerned. The trial Court framed charges against the appellants under Section 20 (b) (ii) B of the NDPS Act, who denied the charges and prayed for trial.

4. In order to prove the guilt of the Appellants, prosecution examined as many as 7 witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. After affording opportunity of hearing to the parties, the trial Court convicted and sentenced the 4 appellants as above.

5. I have heard Learned Counsel for the parties, perused the judgment impugned and records of the Court below.

6. On behalf of the appellants, it is submitted that Sumanta Bhoi(A1), Dara Kahar (A3) and Afwa Kahar (A5) are in custody since 23.6.2011 till today and thereby they have served the sentence for 4 years, 1 month and 25 days, whereas, Appellant, Shrikant Kahar (A2) has served the sentence from 23.6.2011 till 5.5.2015. He had been released by furnishing bail bond. His

substantive jail sentence and fine sentence has also been suspended by order of this Court dated 3.3.2015 and 1.5.2015 and thereby he had served the sentence for 3 years, 10 months and 12 days. They are the first offenders and no criminal antecedents are reported or shown in the charge-sheet.

7. As per charge-sheet, all the appellants were standing together keeping their respective bags with them and it does not fall in the category of joint possession of the recovery of Ganja. They may be held guilty for the respective quantity of psychotropic substance which they were holding in the bags.

8. Learned Counsel for the appellants submitted that as instructed they are not contesting the appeal on its merits for the conviction part but they are only confining their arguments on the quantum of sentence. They further submitted that the sentence undergone by the appellants would be the proper sentence for them.

9. On the other hand, Learned Counsel for the State has opposed the arguments advanced on behalf of the appellants and submitted that all the appellants are residents of village Boudh (Orissa). The appellants were standing together at the place of occurrence and no explanation has been offered. Therefore, it is clear that they were in joint possession of the psychotropic

substance, ganja and the trial Court has rightly sentenced them as above.

10. In order of appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

11. The appellants are not contesting the appeal on its merits for conviction part but they are only contesting the appeal on quantum of sentence. The appellants, Sumanta Bhoi (A1), Shrikant Kahar (A2), Dara Kahar (A3), Jashwant Bhoi (A4) and Afwa Kahar (A5) were found in possession of 12,500 gm, 5,250 gm, 2 kg, 2 kg and 3,950 kg respectively. They belong to the same district. They were standing together on the place of occurrence with the said quantity of ganja. The total of 25,400 gm ganja was seized jointly from all the appellants and it was not seized individually. But simply standing together, it cannot be held that they were in joint possession. Instead they are liable for the quantity which they were holding in their respective bags.

12. After appreciation of the evidence, I do not find any illegality or impropriety in the judgment impugned. So far as quantum of the sentence is concerned, appellants A1, A3 & A5 have served the sentence for 4 years 1 month and 25 days and Appellant A2 has served the sentence for 3 years, 10 months and 12 days. Looking to the quantity of the psychotropic substance, ganja, the

period already undergone by them would meet the ends of justice. So far as fine sentence is concerned, I am of the view that it is on the maximum side, whereas the quantity for which the fine may be imposed is for the possession upto 20 kg. In the present case, no appellant was individually found keeping ganja for the highest side of the category in which they were charged. In the circumstances, it requires modification. The period already undergone and fine of Rs.5,000/- to each of the appellants would meet the ends of justice.

13. Consequently, the appeal filed on behalf of the appellants is partly allowed. The judgment of conviction passed by the trial Court is affirmed. The judgment of sentence passed against them is modified. Instead of R.I. for 10 years, each of the appellants is sentenced for the period already undergone. The fine sentence is also modified. Instead of fine of Rs.1,00,000/-, each of the appellants is sentenced for fine Rs. 5,000/- and in default of payment of fine of Rs.5,000/- they are sentenced to R.I. for 6 months.

14. Appellants A1-Sumanta Bhoi, A3- Dara Kahar and A5- Afwa Kahar are in jail. If they deposit the fine amount of Rs.5,000/- (each of the appellants), they be set at liberty forthwith, if not required in any case. In case they fail to deposit the fine amount, they will serve the default sentence of R.I. for 6 months. Appellant

A2, Shrikant Kahar is on bail. His sentence was suspended by this Court. The concerned are directed to realize the fine amount from Appellant A2- Shrikant Kahar within a period of 2 months from today, failing which, he shall serve the default sentence of fine amount for R.I. for 6 months till realization of fine.

Sd/

(Chandra Bhushan Bajpai)
JUDGE