

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 542 of 2014**

- Sukhpal Mahra S/o Budhsan Mahra Aged About 48 years R/O. Panarapara, Behind School Jagdalapur, P.S. Kotwali Jagdalpur, Distt. Bastar (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through: P.S. Kotwali, Distt. Bastar (C.G.)

---- Respondent

For appellant	: Shri P.K. Tulsian, Advocate.
For Respondent	: Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****08/04/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26-3-2014 passed by the Special Judge, Narcotic Drugs and Psychotropic Substances Act (in brevity 'NDPS Act'), Jagdalpur in Special Case No. 8/2012 whereby and whereunder learned trial Court after holding the appellant guilty for illicit possession of contraband article ganja cannabis weight 13.750 kg, convicted him under Section 20(b)(ii)(B) of the NDPS Act.
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 16-7-2012, P.W. 9 Narhari Vaishnav, ASI, received information about 7.15 pm from the informant that appellant is in illegal possession of ganja in his house. He recorded the information in Rojnamcha Sanha Ex. P-24. He also instructed Constable Sandeep Salam to call for panch witnesses and recorded it in Rojnamcha Sanha No. 62 vide Exp. P-25. Constable Sandeep Salam returned with two panch witnesses which is recorded vide Ex. P-26. Thereafter he prepared the information regarding offence, panchnama of inability to obtain search warrant, also prepared mukhbir suchana panchnama vide

Ex. P-27, 28 and 29. All the documents were sent to the office of CSP vide Ex. P-30. Thereafter at about 9 pm, he along with police party and panch witnesses reached to the house of the appellant. He gave him a notice under Section 50 of the NDPS Act vide Ex. P-4. Thereafter appellant made search of the police party in front of panch witnesses. No illegal substance was noticed with police party which is recorded vide Ex. P-5. Thereafter he was noticed vide Ex. P-6 regarding his legal right about his search either before the IO or before senior officer. The appellant consented to be searched by the IO. Thereafter the IO made a search inside the house of the appellant. The substance filled in white plastic bag was noticed which was physically examined and found ganja and small weighing apparatus was also there. Search panchnama was prepared vide Ex. P-7. The ganja kept in two plastic bags and taraju were seized vide Ex. P-8. Physical examination panchnama was prepared vide Ex. P-9. The IO duly mixed the substance separately found in two plastic bags vide Ex. P-10. The ganja was weighed through electric weighing machine in which 8.200 gm ganja was found in one bag and 5.550 kg was found in another bag total 13.750 kg ganja was found. Two samples of 100 gm from each bag was prepared vide Ex. P-2. Sample panchnama of ganja was prepared vide Ex. P-11. He gave notice to the appellant to produce any document regarding permission to keep those ganja with him. The appellant informed that he is not having any legal document permitting him to keep ganja in his house so recovered. Spot map was prepared vide Ex. P-16. He also arrested the appellant vide arrest memo Ex. P-15. He wrote unnumbered FIR on the spot Ex. P-33. During investigation, he recorded statement under Section 161 of the Code of Criminal Procedure in brevity 'Code') of the witnesses. After returning to police station, seized articles were sent to Moharrir. He recorded FIR Ex. P-35 and registered Crime No. 269/12 against the appellant. He also furnished report of entire proceeding i.e. seizure and arrest to his immediate senior officer vide Ex. P-36. He sent the sample for chemical analysis vide Ex. P-21 to FSL, Raipur which vide its report Ex. P-39 confirmed presence of ganja in the samples.

After completion of investigation charge sheet was filed before the Special Judge on 10-9-2012. Learned Special Judge conducted trial. The appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act who denied the charges and prayed for trial. During trial prosecution examined 10 witnesses to prove the guilt of the appellant. Statement of the appellant was recorded under Section 313 of the Code in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.

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

5. Heard learned counsel for both the parties and perused the record.

6. Learned counsel for the appellant vehemently argued that he is not contesting the criminal appeal on the point of conviction. He is arguing only on the point of quantum of sentence. He submits that the appellant was first offender with no criminal history of likewise offence. From 17-7-2012 he is in custody till date. Thereby has served more than half of the sentence. He will not commit any offence of similar nature in future. He may be sentenced to the period already undergone by him.

7. Learned counsel for the respondent/State opposed the argument advanced on behalf of the parties and submitted that the judgment of the trial Court including sentence part is well founded. There is no scope for any interference. Looking to the quantity of ganja seized, the trial court has rightly sentenced him. Hence the appeal may be dismissed.

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

9. On minute scrutiny of the evidence, it goes to show that prosecution has duly proved that the appellant though labour by profession was found in illegal possession of 13.750 kg of ganja in his residence. I do not see any illegality or impropriety in the judgment of conviction passed by the trial Court. Hence

conviction of the appellant is upheld.

10. As regards quantum of sentence, as argued the appellant has already served more than half of the sentence i.e. 2 years 8 months and 21 days out of 5 years. He was first offender with no criminal past of likewise offence. He is a labour earning his bread anyhow. Looking to the entire facts and circumstances, it would be proper to give him an opportunity to enable him to live as law abiding people of the society. There is no minimum sentence prescribed for the offence.

11. Consequently, the appeal filed by the appellant is partly allowed. The judgment of conviction under Section 20(b)(ii)(B) of the NDPS Act passed by the trial Court is affirmed. Fine sentence is also maintained. However, instead of RI for 5 years as awarded by the trial Court, the appellant is sentenced to the period already undergone by him.

12. The appellant is in jail. He be released forthwith if not required in any other case.

Sd/-

Chandra Bhushan Bajpai
Judge