

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 271 of 2012**

Dharamveer S/o Phool Singh, aged about 20 years, R/o Saimarchuwa, village Patelpara, near Pipal tree, police station Jarhagaon, district Bilaspur, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through Station House Officer, police station : G.R.P. Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri K.N. Nande, Advocate.
For the Respondent/ State	:	Shri Sumit Jhanwar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****10/08/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.2.2012 passed by the Learned Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') in Sessions Trial No. 49 of 2011 whereby and whereunder the learned trial Court after holding the Appellant guilty for illicit possession of 17 kg Ganja, convicted him for offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 5 years, also to pay a fine of ₹25,000/- in default of payment of fine to further undergo R.I. for one year.

(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 17.07.2011, the Investigating Officer (the IO) received information from the informant that a person

aged about 20 years is in possession of ganja. On the said information, the IO prepared a Mukhbir Suchana Panchnama and search Panchnama under relevant provisions. Thereafter alongwith Panch witnesses police reached to the spot at platforms No.2 and 3 whereby they saw the Appellant and on being asked, the Appellant disclosed his name and address. He was duly intimated regarding the information received about him of possessing ganja and that if he desired, he may be searched before any gazetted officer or before any Magistrate. The Appellant consented to be searched from the IO itself. He was having two bags. They were opened and physically identified as ganja. Thereafter, the IO conducted the entire investigation and seized 17 kg ganja and prepared two samples of 50 grams each. Thereafter, he lodged the First Information Report and sent the samples of ganja to FSL for chemical examination. The FSL after examination confirmed the presence of ganja. After completion of investigation charge sheet was filed before the Special Judge. The Appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act. He denied the charge and prayed for trial.

(4) In order to prove the guilt of the Appellant, prosecution examined seven witnesses. Statement of the Appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

(5) After providing opportunity of hearing to the parties, Learned trial Court convicted and sentenced the Appellant as aforementioned.

(6) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the Appellant submitted that as instructed he is not contesting the appeal on its merit. He is confining his arguments only on the quantum of sentence. At the time of incident, the Appellant was a young boy of 20 years of age with no previous criminal history of the like offence shown in the charge-sheet. He is the first offender. He is in jail since 4 years 23 days. There is no minimum sentence prescribed for the offence. It was lastly submitted that looking to the facts and circumstances of the case, the sentence may be reduced to the period already undergone.

(8) On the other hand, learned counsel for the Respondent/ State opposed the submission advanced on behalf of the Appellant and submitted that looking to the quantity of ganja seized from the Appellant which goes to show that he was deliberately transporting the said ganja for the purpose of their sale and use. The trial Court rightly sentenced the Appellant. Hence, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

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

(10) Since the Appellant is not contesting his conviction under Section 20(b)(ii)(B) of the NDPS Act and also while perusing the entire assessment of the witnesses by the trial Court mentioned in the impugned judgment, it appears that conviction of the Appellant for the offence under Section 20(b)(ii)(B) of the NDPS Act is well founded. The trial Court has not committed any illegality while convicting the Appellant.

(11) Even otherwise on perusal of the entire evidence, I am of the view that there is no scope for interference with the conviction against the Appellant and the conviction part is liable to be affirmed.

(12) So far as quantum of sentence is concerned, 17 kg ganja was seized from the possession of the Appellant. The fine awarded by the trial Court is also proper and adequate. I do not find any reason to award lesser fine sentence and the same is also liable for affirmation.

(13) So far as order of sentence is concerned, the Appellant was a young boy of 20 years at the time of the incident. He was resident of District Bilaspur. No previous case history was shown or investigated. During the investigation of present case, it reveals that the Appellant is not having any previous criminal history regarding the same offence. There is no minimum sentence provided for the offence and the Appellant has already served the sentence for RI for 4 years and 23 days.

(14) On due consideration, I am of the view that the period already undergone regarding the sentence would be sufficient to meet the ends of justice.

(15) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant is hereby affirmed. Fine sentence awarded by the trial Court is also hereby affirmed. So far as substantive jail sentence is concerned the sentence is modified and instead RI for 5 years, the Appellant is sentenced to the period already undergone by him.

(16) The Appellant be released forthwith if he has deposited the fine amount awarded by the trial court, and if not required in any other case. If he has not deposited the fine amount awarded by the trial court, he shall undergo the jail sentence as per the default clause mentioned in the impugned judgment.

(17) In view of the above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE