

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 606 of 2015**

- Rajesh Kumar Rajak S/o Anilal aged about 36 years R/o Village- Chatta, P.S. Themi, Tahsil Gotegaon, District Narsinghpur M.P.

---- Appellant**Versus**

- The State of Chhattisgarh through : Arakshi Kendra Darbha, District Bastar Chhattisgarh

---- Respondent

For appellant : Mr. S.C. Verma, Advocate.
For Respondent/State : Ms. Sangita Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Oral Judgment****17/06/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-4-2015 passed by the Special Judge (Narcotic Drugs and Psychotropic Substances Act [in short 'NDPS Act']) Jagdalpur (CG) in Special Case no. 5/14 whereby and whereunder learned Special Judge after holding the accused guilty for illegally possessing 10 kg. of Ganja convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 3 years and to pay a fine of Rs. 3,000/-, in default of payment of fine, to further undergo additional RI for 3 months.
2. Conviction is impugned on the ground that without there being any iota of evidence, learned Special Judge convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on 29-3-2014 at about 9.30 am, P.W. 10 IO Surendra Pambhoi, Sub Inspector received an information from informant that few persons are coming from Sukma in a bus possessing

ganja. After receiving the information, he recorded the Rojnamcha Sanha Ex. P-28. Thereafter sent Constable Bhima Mandavi for calling panch witnesses and recorded Ex. P-29-C. Thereafter when independent witnesses reached he informed the information received from the informer and prepared Ex. P-30-C and thereafter along with other staff and panch witnesses he proceeded for the spot. When the bus concerned reached he inquired from the appellant and other suspects and made him aware of his legal right to be searched by the IO itself or by gazetted officer. The appellant agreed to be searched by the IO itself. The IO made search after the search conducted by the appellant of the staff and other witnesses. The appellant kept a bag in which the material found was physically examined and the same was identified as ganja and thereafter the weight of the illicit substance ganja was taken. After weighment the said 10 kg ganja was duly seized and sealed. Two samples each of 50 gms. were prepared. They were also seized and sealed. During investigation statement of witnesses were recorded under Section 161 of the Code of Criminal Procedure (in brevity 'Cr.P.C.'). In the FSL report presence of ganja in the samples were confirmed. Thereafter charge sheet was filed before the trial Court.

4. The trial Court framed the charges against the appellant. The appellant denied the charges and prayed for trial. In order to prove the guilt of the appellant, prosecution examined as many as 10 witnesses in all. The appellant was examined under Section 313 of the Cr.P.C. wherein he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.

5. After providing opportunity of hearing to the parties, learned Special Judge under the NDPS Act convicted and sentenced the appellant as

aforementioned.

6. Learned counsel for the appellant fairly submitted that he is not contesting the appeal on merit regarding conviction of the appellant. He is confining his argument regarding quantum of sentence only. As argued, the appellant is the first offender. No previous similar offence is reported during investigation. He is a labourer. He will not commit similar offence again. He is aged about 36 years. He be given an opportunity so that he may live in the society without involving himself in any offence.

7. Per contra, learned counsel appearing for the State opposed the arguments advanced on behalf of the appellant and submitted that looking to the quantum of ganja recovered from the appellant, the trial Court has rightly sentenced the appellant and there is no scope for any interference in the sentence also.

8. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence and other documents.

9. So far as conviction under Section 20(b)(ii)(B) of the NDPS Act is concerned, the appellant is not contesting the appeal on its merit. Even otherwise, from perusal of entire evidence, I do not find any illegality or infirmity in the judgment of conviction passed by the trial Court. Consequently conviction passed against the appellant awarded by the trial Court is hereby affirmed.

10. So far as quantum of sentence is concerned, the appellant has been sentenced to undergo RI for 3 years. He remained in jail from 30-3-2014 to 26-12-2014 and from the date of judgment i.e. 30-4-2014 till date. The appellant is the first offender. No previous criminal history is reported or shown during investigation in the charge sheet. He is labour by profession.

Looking to the above facts and circumstances of the case, I am of the view that an opportunity should be given to the appellant so that he may live in the society without committing any offence in future. So far as fine sentence is concerned, it cannot be said to be on higher side. Hence the same requires no interference.

11. Consequently, the appeal filed by the appellant is allowed in part. Conviction passed against the appellant under Section 20(b)(ii)(B) of the NDPS Act is affirmed. Fine sentence awarded by the trial Court is also maintained. However, instead of RI for 3 years awarded by the trial Court, looking to the facts and circumstances of the case, in the considered view of this Court, RI for one year would serve the purpose. Consequently, instead of R.I. for 3 years, the appellant is sentenced to undergo R.I. for one year.

Appeal partly allowed.

Sd/-
Chandra Bhushan Bajpai
Judge

