

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 129 of 2013**

- Vikas Kumar Singh S/o Harendra Kumar Singh Aged About 23 years R/o Tajpur Purva Tola, PS Mujaffarpur, Distt. - Mujaffarpur (Bihar) At Present R/o Sumanbada, Delight Hotel, Vidhapur Colony, Vardha Road, PS - Sitabadi, Nagpur (Maharashtra)

---- Petitioner**Versus**

- State Of Chhattisgarh Through SHO, PS G.R.P. Bhilai Chowki, Durg, Distt. - Durg C.G.

---- Respondent

For appellant.	: Shri FS Khare, Advocate.
For Respondent	: Smt. Shobha Kashyap, Dy. Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Borad.****20/04/2015**

Challenge in this appeal is to the judgment judgment of conviction and order of sentence dated 09.8.2012 passed by Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Durg in NDPS Special Case No.21/2011 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 10 kg contraband article ganja, convicted him under Section 20(b)(ii)(B) of the Act and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.20,000/-, in default of payment of fine, to further undergo RI for one year.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned thereby committed illegality.

3. As per the case of the prosecution, on 12.9.2011, investigating officer Rajkumar Borjha (PW-4) received information from informant that a person, who is in illicit possession of contraband article Ganja, is sitting in Durg Railway Station platform. The IO prepared mukhbir suchana panchnama (Ex-P/1) and recorded panchnama vide Ex-P/11C. As there was apprehension that the accused may escape, he prepared the panchama for the search without warrant as Ex-P/2. He also sent information to immediate superior officer vide Ex-P/12. He instructed sub-inspector to reach to the place of incident and informed vide Ex-P/13 that IO reached to the spot and he saw the appellant along with Airbag. He enquired his name and address and gave him notice under Section 50 of the Act and informed him regarding his legal right that he may be searched before a gazetted officer or Magistrate even if he wish, he may be searched by the IO itself. After accepting the notice (Ex-P/3) the appellant gave his written consent to be searched by the IO thereafter the appellant has taken the search of the IO and other police personal and witnesses and no objectionable substances were noticed with the police party and the witnesses and search panchnama was prepared vide Ex-P/5. Thereafter the IO opened the airbag which was with the appellant and noticed 10 packets of substance wrapped in a white polythene. On physical examination substance was noticed as ganja. He had taken two samples of 50-50 grams each marked as A1-A1. The samples taken and the remaining ganja were seized and sealed after its measurement by panchnama (Ex-P/6). Seizure memo (Ex-P/7)C prepared and thereafter he returned to Police Outpost Durg and recorded the complete proceedings and seizure in the rojnamchasanha (Ex-P/14). He has duly lodged First Information Report (Ex-P/15) and the appellant was arrested vide Ex-

P/8. He also recovered railway ticket from the pocket of the appellant and the same was seized vide Ex-P/16. Information regarding arrest of the appellant was given to his family members vide Ex-P/17. Copy of the FIR was also sent to the concerned Court. He also completed the provisions of Section 50 of the Act and sent the complete proceedings and seizure vide Ex-P/18 to the superior officer. The articles so seized were sent for chemical analysis to FSL, Raipur. The FSL vide its report (Ex-P/21) confirmed the presence of ganja in the sample received. The IO recorded the statement of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). He also deposited the seized articles in the malkhana vide Ex-P/22. After completion of investigation, charge sheet was filed before Special Judge on 11.11.11. The appellant was charge sheeted for the offence under Section 20(b)(ii)(B) of the Act, who in turn denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, the prosecution has examined as many as four witnesses. Statement of the appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him pleaded innocence and false implication in crime in question.

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

6. Heard learned counsel for the parties, perused the judgment impugned and record of the Court below.

7. Learned counsel for the appellant vehemently submits that looking to the evidence, facts and material available on record, he is not contesting this appeal on its merits, but he is confining his argument

only on the quantum of sentence only. As per submission, the applicant was aged about 22 years at the time of incident, the incident is about four years old, the appellant was first offender with no criminal history, he has already remained in jail and thereby served the part of the sentence for two years two months and twenty days thereafter as per order dated 02.12.13 his jail sentences were suspended and he was released on bail. He will not commit any offence in future. Looking to the facts and circumstances, as he committed mistake, he may be given opportunity to remain away from this criminal activities, hence, looking to his future, he may be granted one opportunity.

8. On the other hand, learned counsel for the State/respondent opposed the arguments advanced on behalf of the parties and duly supported the judgment of conviction and order of sentence and submitted that looking to the quantity of ganja seized, the trial Court has rightly convicted and sentenced the appellant which requires no interference, hence the appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties and perused the judgment impugned.

10. As the counsel for the appellant is not assailing the appeal against the judgment of conviction and even after perusal of the entire evidence adduced before the trial Court, I do not find any illegality or infirmity in the judgment of conviction passed by the trial Court.

11. So far as the quantum of sentences are concerned, the appellant was sentenced for RI for five years and to pay fine of Rs.20,000/-. He has already deposited fine amount as his substantive jail sentences only was suspended by this Court and the appellant during the custody

served part of the sentence for two years two months and twenty days. At the time of incident, the appellant was aged about 22 years and he is not local resident of the State. Major part of the sentence imposed upon the appellant is already been served by him and he had already paid fine amount, as his substantive jail sentence was only suspended and no previous criminal activities by the appellant was noticed by the IO during investigation.

12. By considering the entire facts and circumstances, it would be appropriate to provide one opportunity to the appellant so that he may not be involved in any other offence in future. It would be appropriate and just to sentence the appellant for the period already undergone by him.

13. Consequently, the appeal is allowed in part. Judgment of conviction passed by the trial Court against the appellant is hereby affirmed. Fine sentence passed by the trial Court is also maintained. So far as jail sentences are concerned, instead of RI for five years, he is sentenced for the period already undergone by him. It is stated that the appellant is on bail. His bail bonds shall continue for further period of six months as per requirement of Section 437A of the Code.

(Chandra Bhushan Bajpai)
J U D G E