

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 958 of 2015

1. Sanjeet Kumar Ram S/o Late Maheshwar Prasad, aged about 44 years, R/o Village Chakfarid, P.S. Mofsil District Begusaray Bihar

---- Appellant

Versus

1. State of Chhattisgarh Through : Police Station G.R.P. Bilaspur, District - Bilaspur Chhattisgarh

---- Respondent

For Appellant – Ms. Kiran Jain, Advocate.

For Respondent – Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

25/08/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 03-08-2015 passed by the Special Judge [under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'the NDPS Act')], Bilaspur, C.G., in Special Criminal Case No.20/2015 whereby and whereunder learned Special Judge after holding the appellant guilty for illicitly possessing 4 kg ganja, convicted the appellant for the offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo RI for 1 year along with fine of Rs. 15,000/-, 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 court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 06-12-2014, at about 08.40 p.m. the IO, PW-7, ASI, L.N.Pradhan, was informed that the appellant present at platform No.1,

Pendraroad, is having illicit possession of ganja in a black carry bag. The information received by the informant was duly recorded and thereafter, after performing initial proceedings, the IO along with police party and two panch witnesses reached to the spot. They saw the appellant. After obtaining information regarding his name and address, the IO gave notice under Section 50 of the NDPS Act and informed him about his legal right to be searched before Gazetted Officer/Magistrate, if he wishes so. The appellant consented to be searched by the IO itself. The carry bag in the possession of the appellant was searched. The substance recovered from the carry bag found to be ganja on physical examination which was duly seized and sealed, and samples were prepared and also sealed. One ticket for journey from Bilaspur to Pendraroad was also recovered and seized. The IO duly taken weight of the ganja. The said substance was of 4 kg. After conducting entire enquiry, the FIR was lodged. After chemical analysis conducted by the FSL, the charge sheet was filed before the Special Judge under the NDPS Act, Bilaspur, C.G.

4. The learned trial Court framed the charges against the appellant. The appellant denied the charges and prayed for trial.

5. In order to prove guilt of the appellant, prosecution examined 7 witnesses in all. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the crime in question.

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

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.

8. Learned counsel appearing for the appellant submitted that, as instructed,

she is not contesting the appeal for conviction part, she is confining her argument only on the quantum of sentence. Learned counsel for the appellant further submitted that the appellant is the first offender with no previous criminal history for the similar offences; 4 kg. ganja was recovered from conscious possession of the appellant; he is in jail since 8 months and 18 days thereby he has served almost major part of the sentence; he will not commit any offence in future, also there is no minimum sentence prescribed for the offence under Section 20(b)(ii)(B) of the NDPS Act, therefore, he be given an opportunity to live as a law abiding citizen.

9. On the other hand, learned counsel appearing for the State/respondent opposed the argument advanced on behalf of the appellant and submitted that as the appellant hails from District Begusaraj, Bihar and he was found at Pandrabad railway station for which no any acceptable explanation was given regarding his presence; he was carrying 4 kg. of ganja. Looking to the entire facts, the trial Court rightly sentenced the appellant which requires no interference. Learned counsel for the State/respondent prayed that prayer made in this behalf may be dismissed and the appeal also be dismissed as not maintainable.

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

11. From the perusal of the entire evidence, it goes to show that no any previous criminal history was shown or proved by the prosecution before the trial Court; the quantity of the ganja seized from the conscious possession of the appellant is 4 kg. The appellant is in jail since 8 months 18 days to till date. He is the first offender. Looking to the entire facts and circumstances, in the considered view of this Court, it would serve the ends of justice if the appellant is sentenced for the period already undergone by him affording him one opportunity.

12. Consequently the appeal filed by the appellant is hereby partly allowed. Conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby

affirmed. Fine sentence awarded to the appellant by the trial Court is also hereby maintained. However, substantive jail sentence awarded to the appellant is modified and instead of RI for 1 year, he is sentenced to the period already undergone by him. If fine amount is deposited by the appellant, he be set at liberty forthwith if he is not required in any other case. If the fine amount is not paid, then the appellant be served with default part of the sentence as mentioned in para 41 of the judgment impugned.

13. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge