

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 970 of 2015**

Mahmood Alam, S/o Ismaiel, aged about 45 years, occupation Fruit Merchant, R/o Hazipur Ward No. 17, Police Station & Tahsil-Khagadia Civil & Revenue District Khagadia (Bihar)

---- Appellant

Versus

State of Chhattisgarh Through Station House Officer, GRP Raigarh, Civil & Revenue District Raigarh (CG)

---- Respondent

For Appellant : Shri Surfaraj Khan, Advocate

For State/Respondent : Ms. Pushpa Dwivedi, Panel Lawyer

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****27/8/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 3.8.2015 passed by the Special Judge, (Narcotic Drugs and Psychotropic Substances Act, 1985), Raigarh in Special Case No.20/2014, whereby and whereunder the learned Special Judge after holding the appellant- Mahmood Alam guilty for illicit possession of 2 kg of psychotropic substance ganja, the cannabis, convicted him under Section 20 (b) (ii) B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for

short the 'NDPS Act') and sentenced to undergo R.I. for 2 years and fine of Rs. 5,000/-, in default of payment of fine to further undergo R.I. for 3 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution on 6.12.2014, Sub-Inspector G.R. Rathia (PW9), the Investigating Officer received an information that a person sitting in the 3rd coach from engine in Tata Bilaspur Passenger is going towards Bilaspur along with ganja in an airbag. The information was recorded in the Rojnamcha Sanha and a Panchanama was prepared. The information was sent to the higher officials under Section 42 of the NDPS Act and the Investigating Officer, along with Police party and Panch witnesses, reached to the spot and asked the suspected appellant his name and address and thereafter gave a notice under Section 50 of the NDPS Act regarding his legal rights that he may be searched before the gazetted officer or the magistrate if he wish. The appellant consented to be searched by the Sub-Inspector, PW9. Thereafter on search of the airbag which the appellant was holding, psychotropic substance in a quantity of 2 kg was found. On physical examination, it was

identified as ganja. A sample was prepared and duly sealed and the appellant was arrested. The First Information Report was lodged in the Police Station and the sample was sent to Forensic Science Laboratory for chemical analysis. As per FSL Report, the substance seized containing in the sample was confirmed as ganja. After completion of the investigation, charge-sheet was filed before the concerned Special Court, who in turn, framed charges. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution examined as many as 9 witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. After affording opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as above.

5. Learned Counsel for the appellant submits that he is not contesting the appeal on its merits, but he is confining his arguments to the quantum part only. He submits that the appellant is in jail since 6.2.2014 and thereby he has served the sentence for 8 months and 21 days. He is the first offender and has no criminal history. He belongs to lower middle class, who earns his livelihood by selling fruits. He further submits that the appellant will not commit any such offence in future. Only 2 kg ganja has

been seized from him, which is a small quantity and no minimum sentence has been prescribed for it, therefore, the appellant may be adequately sentenced.

6. On the other hand, learned counsel for the State opposed the prayer and supported the judgment passed by the Court below. He submits that the appellant belongs to District Khagadia (Bihar) and he was caught along with 2 kg of ganja at Raigarh in Tata Bilaspur Passenger while going towards Bilaspur. The quantity seized cannot be held as disproportionate.

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

8. The appellant has not challenged the appeal on its merits. He is only contesting the appeal on quantum of sentence. As argued, the quantity seized is 2 kg and no minimum sentence has been prescribed for it.

9. On perusal of the entire evidence, I do not find any illegality or impropriety in the judgment of conviction passed by the Court below. So far as fine sentence is concerned, the appellant has been sentenced for fine of Rs.5,000/-, which cannot be held on the higher side. So far as quantum of jail sentence is concerned, 2 kg ganja has been seized from the conscious possession of the appellant. The appellant is a first offender with no criminal history.

He is in jail since 6.12.2014 and thereby he had served 8 months and 21 days. Considering the facts and circumstances, I am of the view that the sentence undergone would be the just and proper sentence for the appellant and it would meet the ends of justice.

10. Consequently, the appeal is partly allowed. The conviction under Section 20 (b) (ii) B of the NDPS Act and fine sentence are hereby affirmed and maintained. For substantive jail sentence, instead of R.I. for 2 years, the appellant is convicted for the period already undergone. It is stated that the entire fine amount has been deposited on 3.8.2015. He be set at liberty forthwith if not required in any other case.

11. The appeal is partly allowed.

Sd/

(Chandra Bhushan Bajpai)

JUDGE