

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 160 of 2014**

Mannu Gandharva S/o Panchram Gandharv, aged 22 years, R/o Kabir Chowk Police Station, Pandatarai, Civil and Revenue District Kabirdham (CG)

---- Appellant

Versus

State of Chhattisgarh Through Station House Officer, Police Station Kabirdham, Civil and Revenue District Kabirdham (CG)

---- Respondent

For Appellant	:	Shri Lokesh Kumar Singh, Advocate
For State/Respondent	:	Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****28/9/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24.11.2011 passed by the Special Judge, Kabirdham (Kawardha) (CG) in Special Case No.159/2010, whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 18 kg psychotropic substance ganja, the cannabis, convicted him under Section 20 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act') and sentenced

him to undergo R.I. for 5 years and fine of Rs.50,000/-, in default of payment of fine to further undergo R.I. for 1 year.

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 16.09.2010 in the morning at about 4.05 am, PW7- Ramsharan Chandrakar, A.S.I. received information that 3 persons are going on a motorcycle towards village Marpa with illicit substance ganja. The information was duly recorded and Panch witnesses were called. The information was sent to superior officials. PW7- Ramsharan Chandrakar, A.S.I. and PW8- Sushil Kumar Verma, A.S.I., Crime Branch, Kawardha along with other Police personnels and Panch witnesses reached to the spot and stopped the motorcycle on which the appellant was going with two persons. PW8- Sushil Kumar Verma gave notice Ex. P/2 under Section 50 of the NDPS Act to the appellant after inquiring his name and address and informed him about his legal rights that he may be searched before the Magistrate or by the gazetted officer. The appellant after receipt of the notice consented to be searched by PW8, the Investigating Officer. Thereafter, the appellant was duly searched. He was having 2 air bags, in which, the objectionable substance was found. On physical examination, it was confirmed as ganja.

The ganja was weighed as 18 kg. The Investigating Officer duly seized and sealed the remaining ganja, collected sample and conducted entire investigation. During investigation, sample was sent to Forensic Science Laboratory for chemical analysis. The FSL Report confirmed the collected sample as ganja. The remaining ganja was deposited in safe custody in the Malkhana. PW7- Ramsharan Chandrakar recorded the statements of the witnesses under Section 161 Cr.P.C. The appellant was taken into custody and FIR was lodged. After completion of the investigation, charge-sheet was filed before the concerned Special Judge for trial. The learned Special Judge charged the appellant for illicit possession of 18 kg ganja. The appellant denied the charges and prayed for trial.

4. In order to prove the guilt of the appellant, prosecution examined as many as 8 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 conviction of substantive jail sentence awarded to the appellant, but he is contesting the appeal on the quantum of fine sentence. He further submits that the appellant is

a young boy aged about 22 years and he is in jail since 16.9.2010 till today, thereby he had completed the entire substantive jail sentence. He submits that fine sentence of Rs.50,000/- has been awarded to the appellant. He is the first offender. He was running a small beetle shop and thereby hardly earning his bread. He will not repeat the similar or any other crime in future, therefore, he be set at liberty. There is no minimum fine sentence prescribed for the offence, hence, looking to his poor condition, the fine sentence may be reduced.

6. On the other hand, learned counsel for the State opposed the arguments and supported the judgment passed by the Court below. He submits that looking to the quantity of 18 kg ganja seized from the possession of the appellant, the trial Court had rightly convicted and sentenced the appellant for the offence, hence, the appeal may be dismissed.

7. I have heard Learned Counsel for the parties and perused the judgment impugned.

8. Learned counsel for the appellant is not assailing the appeal on conviction of substantive jail sentence, but he is contesting for fine sentence only. On appreciation of the entire facts, I do not find any illegality or impropriety in the judgment of conviction of substantive jail sentence, hence, the same does not require any interference.

9. So far as fine sentence is concerned, the trial Court has awarded fine of Rs.50,000/-. There is no minimum fine sentence prescribed for the offence. Looking to the fact that the appellant is the first offender, aged about 22 years on the date of incident, it is prayed that the fine amount be reduced. In the considered view of this Court, fine sentence requires reconsideration. Reducing 50% of the fine amount would serve the ends of justice.

10. Consequently, the appeal filed by the appellant is allowed in part. The conviction and the substantive jail sentence awarded to the appellant under Section 20 (b) of the NDPS Act is hereby affirmed. The fine sentence awarded by the trial Court of Rs.50,000/- is hereby reduced. The appellant is awarded fine sentence of Rs.25,000/-. In default of payment of fine he shall undergo R.I. for 4 months. As per report, the appellant is in jail since 16.9.2010 till today and thereby he had served 5 years and 12 days.

11. The appellant be set at liberty forthwith after realization of the fine amount of Rs.25,000/-. If the fine amount is not deposited, he be served with the default sentence till realization of the fine amount.

12. The appeal is partly allowed.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

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