

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1174 of 2015**

Silochana wife of late Parmeshwar Shikari, caste Shikari/ Malya aged about 30 years, R/o. Village Matiyari, P.S. Seepat, District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through the Police Station House Torwa, District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri K.N. Nande, Advocate.
For the Respondent/ State	:	Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****23/09/2015.**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.9.2015 passed by the Learned Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act'), Bilaspur in Special Criminal Case No. 343 of 2014 whereby and whereunder the learned trial Court after holding the Appellant guilty for illicit possession of 7 kg Ganja, convicted her for offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced her to undergo RI for 3 years, and to pay fine of ₹20,000/-, in default of payment of fine to further undergo R.I. for four 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 27.08.2014, Sushila Tekam (PW-5), Investigating Officer (the IO) received an information from the informer about illegal transportation of Ganja. On receiving such information, the IO informed her superior officials. Thereafter, alongwith Panch witnesses and other Constables, at about 2:35pm, the IO went to the spot i.e. Gurunanak Chowk, Bilaspur and they saw the Appellant. On being asked, the Appellant disclosed her name and address. The IO served her notice under Section 50 of the NDPS Act wherein she was duly intimated regarding the information received about her of possessing Ganja and that if she desired, she may be searched before any gazetted officer or before any Magistrate. The Appellant consented to be searched by the IO herself. The IO taken away the bag which the Appellant was having and on physical verification it was found to be Ganja. Thereafter, the IO conducted the entire investigation and seized 7 kg Ganja. Thereafter, she lodged the First Information Report and sent the sample of Ganja to FSL for chemical examination. The FSL after examination confirmed the presence of Ganja. After completion of investigation, charge sheet was filed before the Special Judge. The Appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act. She denied the charge and prayed for trial.

(4) In order to prove the guilt of the Appellant, the prosecution examined five witnesses. Statement of the Appellant was recorded under Section 313 of the Cr.P.C. in which she denied the circumstances appearing against her, pleaded innocence and false implication in the crime in question.

(5) After providing opportunity of hearing to the parties, Learned trial Court convicted and sentenced the Appellant as aforementioned.

(6) I have heard Learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the Appellant submitted that as per the instructions received, the Appellant is not contesting the appeal on its merit whereby and whereunder she has been found guilty under Section 20(b)(ii)(B) of the NDPS Act. Learned Counsel submits that he is confining his arguments on the question of quantum of sentence only. At the time of incident, the Appellant was a widow aged about 30 years with no criminal antecedents of the like offence shown in the charge-sheet. She is the first offender. She is in jail since 1 year 25 days *i.e.* from the date of arrest *i.e.* 28.8.2014 till date. She is a poor lady and will not commit any similar or other offence in future. There is no minimum sentence prescribed for the offence and she has suffered a lot by languishing in jail for about 1 year and 25 days. It was lastly submitted that looking to the facts and circumstances of the case, the sentence may be reduced to the period already undergone by her.

(8) On the other hand, learned counsel for the Respondent/ State opposed the submissions advanced on behalf of the Appellant and submitted that the quantity of Ganja seized from the Appellant clearly goes to show that she was deliberately transporting the said Ganja for the purpose of sale and use. The trial Court has rightly sentenced the Appellant and as such, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(10) From perusal of the entire facts, it reveals that the Appellant is a widow aged about 30 years with no criminal antecedents regarding the same offence or any other offence. She is in jail since 1 year and 25 days and only 7Kg of Ganja has been recovered from her. She prays for an opportunity to remain in the society without involvement in any crime in future. Looking to the entire facts and as the Appellant is not assailing her conviction, this Court need not go into merits in this regard.

(11) Even otherwise on perusal of the entire evidence adduced and the facts and circumstances, I do not find any illegality or impropriety in the judgment of conviction passed against the Appellant. I am of the view that there is no scope for interference with the conviction of the Appellant and the conviction part is liable to be affirmed.

(12) So far as quantum of substantive jail sentence and fine sentence are concerned, after consideration of entire facts, this Court is of the considered opinion that it requires interference.

(13) On due consideration, I am of the view that the period already undergone by the Appellant regarding the jail sentence would be sufficient to meet the ends of justice.

(14) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant is hereby affirmed. However, fine sentence of ₹20,000/- awarded by the trial Court is hereby reduced to ₹10,000/- and in default of payment of ₹10,000/-, the Appellant has to undergo additional RI for 4 months. So far as substantive jail sentence is concerned, the sentence is modified/reduced and instead of 3 years, the Appellant is sentenced to the period already undergone by her.

(15) The Appellant be released forthwith if not required in any other case after deposit of the fine amount of ₹10,000/-. As per order of this Court, if the Appellant has not deposited the fine amount, then she has to serve the default sentence as ordered by this Court and she be released only after realization of fine amount or after serving the default sentence.

(16) In view of the above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE