

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1175 of 2015**

Akhilesh Kumar, S/o. Jagdish Prasad, aged about 40 years, R/o. Nanapali,
Thana Bargarh, Distt. Bargarh (Orissa)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station GRP
Bilaspur Distt. Bilaspur (CG)

---- Respondent

Shri Sanjay Patel, counsel for the appellant.
Shri Aditya Sharma, Panel Lawyer for the State.

Judgment On Board**23/9/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 07.8.15 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'the Act'), Bilaspur in Special Criminal Case No.14/15 whereby and whereunder the learned Special Judge, after holding the appellant guilty for illegal possession of 5 kg ganja, convicted him under Section 20(b)(ii)(B) of the Act and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.20,000/-, in default of payment of fine, to further undergo RI for four months.

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 12.12.14 Investigating Officer SL Navratna (PW-5) received information from informant that the appellant is in possession of 5 kg of ganja and standing in the platform No.7-8 at Railway Station Bilaspur towards Katni end. He recorded the information, informed the superior officials and along with

police party and panch witnesses reached to the spot, noticed the appellant standing, thereafter he was served the notice under Section 50 of the Act informing the legal rights of the appellant that he may be searched before the Magistrate or Gazetted Officer. After the notice, the appellant gave his consent to be searched by the investigating officer himself. Thereafter during search of hand bag which was carried by the appellant some substance like ganja in five packets were noticed. On physical examination same was confirmed as ganja. The IO after recording the weight of the said ganja as 5 kg taken two samples of the said ganja and the samples were accordingly seized and sealed. He lodged First Information Report, kept the ganja and the samples in the Malkhana of the police station and thereafter after obtaining draft from Superintendent of Police samples were forwarded to FSL Raipur for chemical analysis. The FSL Raipur after analysis confirmed the presence of ganja in the samples. After entire investigation, charge sheet was filed before Special Court.

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

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

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

7. I have heard learned counsel for the parties and perused the judgment impugned.

8. Learned counsel for the appellant argued that as directed, he is not contesting the instant criminal appeal for the judgment of conviction passed by the trial court. He is confining his argument on the quantum of sentence only. Learned counsel would submit that the appellant is first offender with no previous criminal history regarding similar or any other offence, he is in jail serving the sentence since 12.12.14 thereby served the part of the sentence for nine months and eleven days. He is a poor person and he will not commit any other offence in future, he be given an opportunity, he may be adequately sentenced for the offence committed by him as there is no minimum sentence prescribed for the offence.

9. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant and submitted that the appellant is a resident of district Bargarh, Orrissa. He was caught along with 5 kg ganja at Bailaspur railway station. He is a matured person by age goes to show that he is engaged in illegal act of either sale or consumption of seized ganja. Looking to the entire facts, the trial Court after due consideration sentenced him for RI for two years and to pay fine of rs.20,000/- with default stipulations which is appropriate looking to the act, hence the appeal may be dismissed.

10. For the purpose of appreciation of the arguments advanced on behalf of the parties, this court perused the impugned judgment and other facts mentioned in the memo of appeal.

11. As the appellant is not contesting the instant criminal appeal for judgment of conviction and also after due perusal of appreciation of the trial Court, I do not see any illegality or impropriety in the judgment of

conviction passed by the trial Court. Consequently, judgment of conviction requires no interference and the same is affirmed.

12. So far as the quantum of both the sentences are concerned, the appellant is first offender with no criminal history of similar offence or for an othe offence discussed in the judgment , he was arrested along with 5 kg of ganja, he prayed before the court for an opportunity so that he may live without committing any offence in future similar or otherwise. He is in jail since nine months and eleven days also there was no any minimum sentence prescribed for the offence.

13. On due consideration, in the considered view of this Court, substantive jail sentence of one year and the fine sentence of Rs.10,000/- would meet the ends of justice. Consequently, the appeal is allowed in part.

14. It is ordered that conviction passed against the appellant under Section 20(b)(ii)(B) of the Act is hereby affirmed. So far as the substantive jail sentence, instead of two years, the appellant is sentenced RI for one year along with set off period as the appellant is in jail since 12.12.14. The appellant is awarded the sentences of fine for Rs.10,000/-, in default of payment of fine, he is sentenced to undergo RI for four months. The Authorities are directed to serve the sentences as directed. The appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE