

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1211 of 2015**

Kashiram Rathiya s/o Sobhan Rathiya aged about 35 years, R/o Deendayal Colony Raigarh, P.S. City Kotwali Raigarh, Tah. & District Raigarh (CG)

---- Appellant**Versus**

State of Chhattisgarh Through D.M. Raigarh (CG)

---- Respondent

For Appellant : Shri V.K. Pandey, Advocate

For State/Respondent : Smt. Shobha Kashyap, Dy. GA

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****06/10/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.9.2015 passed by the Special Judge, (Narcotic Drugs and Psychotropic Substances Act, 1985), Raigarh (CG) in Special Case No.13/2012, whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 1kg and 990gm 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 1.5.2012 at about 7.00 pm, A.S.I., Shri R.S. Tiwari (PW6) received information that the appellant had kept ganja in a plastic bag at Kewda Badi, Bus Stand, Raigarh. On which, he called the Panch witnesses and prepared panchanama, Ex. P/16. The information was sent to the superior officials under Section 42 of the NDPS Act and the Investigating Officer, along with Police party and Panch witnesses, reached to the spot. The appellant was found at Kewda Badi Bus Stand with a plastic bag. The Investigating Officer served a notice under Section 50 of the NDPS Act, Ex. P/3 to the appellant and informed him regarding his legal rights that whether he may be searched before the gazetted officer or the magistrate. The appellant consented to be searched by the Investigating Officer. Thereafter, on search the appellant was found keeping a bag in which 2 packets of some objectionable substance were found and those were recovered. On physical examination, it was identified as ganja. A sample was prepared and duly sealed, the remaining ganja was seized and the appellant was arrested. The weight of the ganja was 1kg and 990gm. First Information Report was lodged vide Ex. P/25. 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 for trial. The learned Special Judge framed charges under the aforementioned Section of NDPS Act. 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 challenging the conviction part, whereby the appellant has been convicted under Section 20 (b) (ii) (B) of the NDPS Act, but he is confining his arguments to the quantum of sentence only. As per submission of the learned counsel, the appellant is a first offender. During trial and post trial he had served the sentence by languishing in jail from 2.5.2012 to 20.11.2012 and from 31.8.2015 till today thereby, he had served the sentence for 7 months and 22 days. He will not commit any offence in future,

therefore, he be given opportunity. There is no minimum sentence provided for the offence and looking to the quantity of the ganja seized from the possession of the appellant, he be sentenced accordingly.

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 looking to the age of the appellant and the quantity of the ganja so seized from his possession, the trial court has rightly convicted and sentenced the appellant, therefore, the appeal may be dismissed.

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

8. The appellant is not assailing the appeal for the conviction part. Even after perusal of the entire material, I do not find any illegality or impropriety in the judgment of conviction passed and the conviction requires no interference. Also as the trial Court has awarded fine sentence to the appellant for Rs.5000/-, looking to the substance so seized, it cannot be held that fine is on the higher side, hence, the sentence of fine also does not require any interference. So far as quantum of sentence is concerned, the appellant has been awarded R.I. for 2 years and as submitted he has already served the sentence for 7 months and 22 days till today. He is the first offender; there is no previous criminal history

regarding any offence. The ganja so seized was 1 kg and 990 gm and the incident is about 3 ½ years old; the appellant pleaded that he will not commit any offence in future and there is no minimum sentence prescribed for the offence, in the view of this Court, an opportunity be given to the appellant and the period already undergone would meet the ends of justice.

9. Consequently, the appeal is partly allowed. The conviction of the appellant under Section 20 (b) (ii) B of the NDPS Act and fine sentence are hereby affirmed. So far as substantive jail sentence is concerned, instead of R.I. for 2 years, the appellant is convicted for the period already undergone. He be set at liberty forthwith if not required in any other case after recovery of the sentence of fine awarded by the trial Court. If fine amount is not deposited, then the authorities are directed to serve the default sentence to the appellant till realization/as per order of the trial Court.

10. The appeal is partly allowed.

Sd/

(Chandra Bhushan Bajpai)
JUDGE