

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1239 of 2015**

Santosh Kumar Lahrey s/o Goverdhan Lahrey, aged about 50 years, R/o village Lewai, PS Bhatapara, (Gramin), Civil & Revenue District Balodabazar, Bhatapara (CG)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Bhatapara (Gramin)
District Balodabazar Bhatapara (CG)

---- Respondent

For Appellant : Shri A.S. Rajput, Advocate

For State/Respondent : Shri Sameer Behar, PL

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****08/10/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.9.2015 passed by the Special Judge, (Narcotic Drugs and Psychotropic Substances Act, 1985), Balodabazar, District Balodabazar(CG) in Special Criminal (NDPS) Case No.04/2014, whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 4.780 gm 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. 15,000/-, in default of payment of fine to undergo additional 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 3.2.2015, Assistant Sub Inspector, P.S. Bhatapara (Gramin), Shri Rajbhushan Singh (PW8), received information from the informant that the appellant is in illegal possession of ganja for the purposes of sale. The Investigating Officer immediately recorded the information and informed his superior officials for further action and on account of non-availability of the superior official, along with Police party and panch witnesses reached to the spot i.e. house of the appellant. He informed the appellant regarding his rights and after required consent for search, searched the house and recovered one plastic bag in which there was some objectionable substance, confirmed during physical examination as ganja. The weight of the said ganja was 4.780 gm, out of which, 2 samples were prepared and duly seized and sealed. F.I.R. was lodged and the appellant was taken into custody. 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.

4. In order to prove the guilt of the appellant, prosecution examined as many as 11 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 confining the arguments for quantum of sentence only and as directed he is not challenging the judgment of conviction under Section 20 (b) (ii) (B) of the NDPS Act. Learned counsel submits that the appellant is a first offender with no previous criminal history for any offence; he is aged about 50 years; he will not commit any likewise offence in future, therefore, he be given opportunity. He is in jail since 4th February, 2015 till today. 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 the appellant is a matured person, aged

about 50 years and he had kept 4.780 gm of ganja in his house, shows that it was for sale or otherwise for consumption and looking to the quantity, trial court had appropriately convicted and sentenced the appellant as above, 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 contesting the appeal for the judgment of conviction passed against him. Even after perusal of the impugned judgment and the material available, I do not find any illegality or impropriety in the judgment of conviction passed against the appellant, hence, it does not require any interference. So far as fine sentence awarded by the trial court is concerned, it is also not on the higher side looking to the quantity of ganja. Consequently, the fine sentence awarded also does not require any interference.

9. So far as quantum of substantive jail sentence is concerned, the appellant is the first offender with no previous likewise criminal history. He was found in 4.780 gm of illicit possession of ganja in his house. He is in jail since 4th February, 2015 and pleaded that he will not commit any offence in future and there is no minimum sentence prescribed for the offence, it would be appropriate that an opportunity be given to the appellant

by reduction of his sentence appropriately for the entire facts and circumstances. In the considered view of this Court, rigorous imprisonment is not provided by the legislature to minimum hence, on due consideration, R.I. for 1 year would serve the purpose and meet the ends of justice.

10. 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, R.I. for 2 years is reduced to R.I. for 1 year. The authorities are directed to serve the substantive jail sentence awarded by this Court and also to realize the fine amount, failing which, the appellant be served with the default sentence till realization.

11. The appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE