

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 756 of 2008

1. Lakhneshwar @ Kallu S/o Anand Ram Kahra, aged about 40 years, R/o Village-Kera Road, Bhandapara, Janjgir, P.S.-Janjgir, Distt.-Janjgir-Champa, (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through District Magistrate, Janjgir, District Janjgir-Champa, (C.G.)

---- Respondent

For Appellant – Smt. Indira Tripathi, Advocate.
For Respondent – Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

01/02/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 13-08-2008 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Janjgir-Champa, C.G. in Special Criminal Case No.13/2007 whereby & whereunder the learned Special Judge after holding the accused/appellant guilty for illicit possession of 2 kg. 100 grams of ganja, convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo additional rigorous imprisonment for six months.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of prosecution, on 19-09-2007 Janjgir police received information from the informant that the accused/appellant is in illicit possession of ganja in his pan shop. The said information was recorded in rojnamcha and the Investigating Officer, Harprasad Pandey (PW-6), ASI, along with the panch witnesses and staff reached to the pan shop of the accused/appellant and informed him regarding the information received and further gave him a notice under the relevant provision of NDPS Act that he may be searched before the Gazetted Officer or Executing Magistrate if he wishes so. After the notice, the accused/appellant consented for the search of his pan shop by the Investigating Officer. Thereafter, his shop was duly searched and 2 kg. 100 grams of ganja was recovered which was confirmed during physical examination. The Investigating Officer prepared two sample packets of 50 – 50 grams and seized the remaining ganja and sample packets. The appellant/accused was arrested. Thereafter, the First Information Report was lodged by the Investigating Officer. Information to his immediate superior official were sent as required under the law. Also the copy of the First Information Report was sent to the concerned Magistrate. The sample packets were sent for Forensic Science Laboratory. After analysis, the same was found ganja.

4. After completion of the investigation, charge sheet was filed before the Court concerned. The learned Special Judge under the NDPS Act conducted the trial.

5. In order to prove guilt of the appellant, the prosecution examined as many as 6 witnesses. The accused was examined under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

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

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

8. Learned counsel for the appellant submits that, as directed, she is not contesting the instant criminal appeal regarding the judgment of conviction and she is confining her argument only to the quantum of sentence. As per submission made in this behalf, the incident is about 8 years old, the appellant was aged about 30 years at the time of incident with no any previous criminal history, even after this incident he had not involved himself in any similar criminal offence. During the trial and also after pronouncement of the judgment till his suspension of sentence and grant of bail the appellant remained in jail for about 7 months. There is no any minimum sentence prescribed for the offence. Looking to the quantity of the ganja so seized, he be given an opportunity to remain in society without further committing any crime and he may be sentenced for the period already undergone by him. Learned counsel for the appellant further submits that the accused/appellant has already deposited the fine amount.

9. Per contra, learned counsel for the State opposes the argument advanced in this behalf and submits that looking to the act of the appellant, the trial Court rightly convicted and sentenced the appellant. The judgment passed by the Court below is well founded and there is no scope for any interference, hence, the appeal may be dismissed on both counts.

10. On close scrutiny of the evidence adduced by the prosecution and also since, as prayed, the appellant is not challenging the judgment of conviction, this Court is of the view that the trial Court has not committed any illegality or impropriety while convicting the appellant for the aforementioned offence.

11. So far as the quantum of sentence is concerned, as prayed and also as per record of the case, the appellant remained in jail for about 7 months, there is no any minimum sentence prescribed for the offence proved, no any previous criminal history was shown in the charge sheet and as prayed, the accused/appellant had

not involved himself in any similar criminal activity after the present incident, on due consideration of facts and also as the incident is about 8 years and 4 months old, it would be appropriate to sentence the appellant for the period already undergone by him.

12. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 20(b)(ii)B of the the Narcotic Drugs and Psychotropic Substances Act, 1985 is hereby maintained. Fine sentence awarded by the trial Court is also affirmed. However, the jail sentence awarded to the appellant is hereby reduced and instead of rigorous imprisonment for two years, the appellant is now sentenced for the period already undergone by him. The appellant is reported to be on bail. His bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

13. The appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E