

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1938 of 1998**Judgment reserved on: 15.12.2016Judgment delivered on: .12.2016

Shankar Lal S/o Bairagi Dewangan, Aged about 32 years, R/o Village Katangi,
Police Station Kasdol, District Raipur (M.P.) (Now Chhattisgarh)

---- Appellant**versus**

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station Kasdol,
District Raipur (M.P.) (Now Chhattisgarh)

---- Respondent

For Appellant	:-	Shri Shantanu Kumar, Advocate appears under instruction of Shri Sushil Dubey, Advocate.
For Respondent/State	:-	Shri Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Anil Kumar Shukla**C A V Judgement**

1. Challenge in this appeal is to the judgement of conviction and order of sentence dated 03-08-1998 passed by the First Additional Sessions Judge & Special Judge, Balodabazar, District Raipur in Special Criminal Case No. 87/1995, whereby & whereunder learned trial Judge after holding the accused/ appellant guilty for the offence punishable under Section 20-B of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') sentenced him to undergo Rigorous Imprisonment for 6 months and to pay fine of Rs. 5000/-, in default of payment of fine to further undergo RI for one month.

2. Case of the prosecution, in brief, is that on 15-08-1995, K.B. Dwivedi (PW-4), Sub-Inspector and the then Station House Officer, Kasdol, while making inspection in the market of Village Katangi, he received an information from an informant that accused/ appellant was illegally selling Ganja (contraband) in his pan-shop. Sub-Inspector K.B. Dwivedi (PW-4) issued a notice (Ex. P-3) to the accused/ appellant for making his search. By the said notice, Sub-Inspector K.B. Dwivedi (PW-4) apprised the accused/ appellant about his rights to be searched before a Gazetted Officer or a Magistrate or by him. The accused/ appellant agreed to be searched by Sub-Inspector K.B. Dwivedi (PW-4). After obtaining the consent, a search was made in the pan-shop of the accused/ appellant by Sub-Inspector K.B. Dwivedi (PW-4). In the search, 250 grams of ganja (contraband) and cash of Rs.95/- were found in the shop. The same were seized vide Ex.P-1. Dehati Nalishi (Ex. P-4) was recorded by him. Thereafter, FIR (Ex.P-5) was registered against the accused/ appellant in Police Station Kasdol for offence under Section 20 of the Act. Information of search and seizure was given to S.D.O.(P), Balodabazar through Radio Message vide Ex. P-6. The appellant was arrested vide arrest memo Ex.P-7 on 16-08-1995. The seized articles were sent to FSL vide Ex. P-8 for chemical examination. Report of the FSL is Ex.P-9.
3. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. and after completion of the investigation, charge-sheet was filed against the accused/ appellant before the Special Judge, Balodabazar.
4. In order to prove the guilt of the accused/ appellant, the prosecution has examined as many as four witnesses. The appellant was examined

under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, claimed his innocence and false implication in the crime in question and claimed for trial.

5. After providing opportunity of hearing to the parties, learned Special Judge, Balodabazar has convicted and sentenced the appellant as aforementioned. Hence this appeal.
6. Learned counsel appearing for the appellant submits that he is not challenging the impugned judgement so far as it relates to conviction imposed upon the appellant and he only confines his argument to the sentence part only. He submits that the incident took place on 15-08-1995. At the time of incident, the appellant was 32 years of age and this is the first offence. The appellant was in custody for one month and the fine amount imposed upon him, has already been deposited. Lastly, he submits that looking to the facts and circumstances of this case, the sentence imposed upon the appellant may be reduced to the period already undergone by him.
7. Learned State counsel while supporting the judgement of the Court below, has opposed the arguments of learned counsel appearing for the appellant.
8. I have heard learned counsel for the parties, perused the impugned judgement and also record of the Court below.
9. Only 250 grams of Ganja (contraband) has been seized from the possession of the appellant which is a small quantity. The maximum sentence prescribed for the offence punishable under Section 20(i)(A) of the Act is six months imprisonment or fine. The appellant has already deposited the fine amount of Rs.5000/-. Considering the arguments

advanced on behalf of the learned counsel for the appellant and the fact that the matter is of the year 1995, in the interest of justice it would be appropriate that while maintaining the fine amount imposed upon the appellant, the jail sentence is reduced to the period for which he remained in jail.

10. Accordingly, the appeal filed by the appellant is hereby partly allowed.

The conviction of the appellant for the offence punishable under Section 20 of the Act is hereby maintained, however, the jail sentence is reduced to the period already undergone by him. The appellant is on bail. He need not surrender unless otherwise he is required in any other case.

Sd/-
(Anil Kumar Shukla)
Judge