

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 489 of 2008**

- Lakhan Jagat, S/o Lachhi Jagat, aged about 59 years, Occupation- Tea Hotel, Resident of Udiyapara, Station Chowk, Kumhari, District Durg, (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh through, District Magistrate, Durg, District Durg, (C.G.)

---- Respondent

For Appellant	:	Shri Vijay K. Deshmukh, Advocate
For Respondent-State	:	Shri DR Minj, PL for the State

HON'BLE The Vacation Judge**Judgment On Board****24/05/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11.04.2008, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Durg, Chhattisgarh, in special case No.18/07, whereby and whereunder the learned Special Judge after holding the accused/appellant guilty for illegal possession of Ganja, the cannabis 39KG, convicted him under Section 20 (b) (ii) (C) of the NDPS Act and sentenced him to undergo R.I. for ten years and also to pay fine of Rs.1.00 Lac, in default of payment of fine to further undergo additional R.I. for six 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 the case of the prosecution, on 02.11.2007, the SHO Kumhari, Virendra Chaturvedi (PW-7) received an information by the informer that the appellant/accused has kept Ganja illegally on the roof of his house, the Investigating Officer (I.O.) had lodged this information in rojnamchasanha, prepared the Panchnama, requisite the witnesses for enquiry prepared the Mukhbir Suchna Panchnama (Ex-P/6). Thereafter along with police party and panch witnesses after making entry in the rojnamchasanha reached the house of the appellant, gave him notice for the search of his house and he further informed the legal right of the appellant that if he wishes, the search may be conducted in presence of Magistrate/Gazetted Officer or by the I.O. himself. The appellant consented to be searched by the I.O. himself. Thereafter, on due search, the I.O. recovered 8 bags having suspicious substance, the same was duly recovered thereafter on physical examination, the said substance was identified as Ganja. Thereafter weight of the entire substance was taken, which was found 39 KG, the concerned I.O. took out the two samples of 50-50 gms. and seized the remaining Ganja separately and duly seized the same before the Panch witnesses, thereafter gave a notice to the appellant to submit any document or license for keeping the said Ganja. The accused/appellant failed to produce any legal document for the same, thereafter the police duly arrested the accused/appellant, kept the so seized material in the Malkhana, the samples were sent for chemical examination, the FSL confirmed presence of Ganja, the superior officials were informed about the complete enquiry/proceeding regarding the entire incident. After investigation, the charge-sheet was filed before the Special Judge, NDPS Act.
4. The learned trial Court framed the charges against the present appellant for

the offence under Section 20 (b) (ii) (C) of the NDPS Act. The accused/appellant denied the charges and prayed for trial.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 9 witnesses. The accused was examined 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 trial Court has convicted and sentenced the appellant as above.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
7. Learned counsel for the appellant submits that as instructed, he is not challenging the judgment of conviction passed against the appellant, whereby the appellant has been held guilty for the offence, as instructed, he is confining himself for the quantum of sentence. Learned counsel submits that the present appellant is in jail since 2-11-2007 till date thereby has served the sentence for 8 years, 6 months and 22 days till date. The Ganja recovered from him was 39 Kg. Appellant is the first offender, never involved in any similar offence prior to the incident. He is ready to deposit the fine amount awarded by the trial Court. At the time of incident he was aged about 59 year, presently he is aged about 68 years.
8. Looking to the entire facts and circumstances, and the facts as submitted that he will not commit any offence in future and also at the time of incident he was running a small tea shop to earn his livelihood, hence he be sentenced for the period already undergone by him, the period already undergone by the appellant would meet the ends of justice.

9. Per contra, learned State counsel opposes the argument advanced on behalf of the appellant and submits that looking to the quantity of the Ganja so seized from the appellant and other facts and looking to the provision that minimum sentence prescribed shall not be less than 10 years, the trial Court very moderately awarded the minimum sentence as the appellant was in illegal possession of Ganja of commercial quantity. Hence there is no any scope for reduction of sentence passed. Hence the instant appeal may be dismissed on both counts.
10. After perusal of entire evidence adduced by the prosecution before the trial Court and also for the fact that the appellant is not contesting the instant criminal appeal regarding conviction part, I do not see any illegality or impropriety in the findings of the trial Court so as to hold the guilty present appellant under the relevant provisions contained under Section 20 (b) (ii) (C) of the NDPS Act. Hence the judgment of conviction against the present appellant requires no interference and the same is affirmed.
11. So far as quantum of sentence is concerned, the appellant was aged about 59 years at the time of incident and presently he is aged about 68 years, served almost major part of the sentence till date i.e. served for 8 years, 6 months and 22 days, he was not having any similar criminal past prior to the incident as nothing discussed in the judgment or surfaced in the charge-sheet also. The appellant is ready to deposit the entire fine amount. Having considered the entire facts, it would be appropriate to impose sentence upon the appellant upto the period already undergone by him this would serve the purpose.
12. Consequently, the appeal filed by the appellant is partly allowed. Conviction of appellant and fine sentence awarded to the appellant under Section 20

(b) (ii) (C) of the NDPS Act is hereby confirmed, however, the jail sentence awarded to the appellant is modified and instead R.I. for ten years, the appellant is sentenced for the period already undergone by him. It is stated that the appellant is presently languishing in jail, the authorities concerned are directed to release the appellant after depositing the fine amount so directed by the trial Court forthwith, if he is not required in connection with any other criminal matter. If the appellant fails to deposit the fine amount as directed, the appellant be served with the default sentence.

13. Copy of the judgment may be submitted before the trial Court for compliance, as directed.

Sd/-

(Chandra Bhushan Bajpai)
Vacation Judge

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