NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 771 of 2012

- Sobhit Ram Chouhan S/o Sukkhuram Chouhan Aged About 35 Years R/o Village Saraitola , Thana Tumla , Distt. Jashpur C.G.

---- Appellant

Versus

- State Of C.G. S/o Through - P.S. Tapkara, Distt. Jashpur C.G.

---- Respondent

For Appellant — Mr. J.K. Saxena, Advocate
For State — Mr. Lav Sharma, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy

Judgment On Board

21.11.2016

1. The appellant in the instant case stands convicted for the offence under Section 20(B)(2)(B) of the N.D.P.S. Act in Special case Number 11/11 decided by the Special Judge (N.D.P.S.), Jashpur vide its judgment dated 18.07.2012.
2. The case of the prosecution in brief is that the police authorities on receiving some secret information completed the formalities as is required under provisions of N.D.P.S. Act and intercepted the vehicle and found the appellant was traveling alone in the maruti car traveling from Orrisa towards Tapkara bearing registration number OR 14 D 0888 carrying 15 kg of Ganja on 24.09.2011. The police authorities who received the secret information again after completing the statutory requirement of issuing notice before search conducted search of the vehicle and in the back seat of the vehicle they found three polythene

each containing 5 kg of contraband and the contraband was later seized and the seizure memo Ex.P/14 was also prepared and the weighment was conducted in the presence of the witness PW-10, Ram Gopal Jaiswal. After weighment panchnama was Ex.P/15 was also prepared. Finally FIR Ex.P/26 was lodged and the seized article was sent to Malkhana through Receipt Ex.P/21. The sample which was collected from each of the packets was also sent for FSL vide Ex.P/17 report of which was also received Ex.P18 showing that the contraband seized was Ganja. Thereafter the matter was put to trial and during the course of the trial the prosecution examined as many as 12 witnesses and no witness on behalf of the defence was examined. The trial Court finally vide the impugned order dated 18.07.2012 found the appellant guilty of committing the offence and convicted the appellant for the offence under Section 20(B)(2)(B) of the NDPS Act and sentenced him to R.I. for 10 years with fine of Rs. 20,000/- and default stipulation.

3. Leaned Counsel for the appellant contended that it is case where the entire case of the prosecution rests upon the departmental witnesses alone as the independent witness who were examined have not supported the case of the prosecution and as such conviction of the appellant for such offence is bad in law. He further contended that this is the first offence which has been leveled against the appellant and there is no past antecedent against the present appellant. He further submits that the present appellant in the instant case has already remained in custody for the period more than 5 years and if for any reason this Court is not inclined to interfere with the conviction, the sentence part at least may be reduced to the period already undergone.

4. Learned Counsel for the State however opposing the Appeal submits that taking into consideration the fact that the contraband seized from

the possession of the present appellant was 15 kg, it can not be said that the sentence for the period of 10 years is on higher side and prayed for the rejection of the appeal. He further submits that prosecution in the instant case has been able to establish its case by leading cogent evidence of the departmental witnesses. Accordingly though the independent witness have not supported the case to the extent of denying the seizure as well as weighment part is concerned. But all the witnesses accepted of their putting signature to the weighment Panchnama as well as seizure memo and other proceeding drawn. The State Counsel therefore submits that the case of the prosecution stands established on the basis of the departmental witnesses alone.

5. Having considered the rival contentions put forth on either side and on perusal of the record by now is well settled legal position so far as provisions under NDPS act is concerned even in absence of any support being received from the independent witnesses. The case of the prosecution can be held to have been proved on the basis of the departmental witnesses examined. The lead case in this regard is the judgment of the Hon'ble Supreme Court reported in **2003 (8) SCC 726** in the case of **P.P. Fathima v. State of Kerla** and recently also in the case of **Kuldeep Singh v. State of Punjab** reported in **(2010) 10 SCC 219** the Supreme Court reiterated the principle laid down in the case of P.P. Fathima (supra).

6. Based upon the two decisions of the Hon'ble Supreme Court referred above and taking into consideration the evidence which have come on record in the present case, this Court has no hesitation in reaching to the conclusion that the case of the appellant stands proved by the prosecution witnesses particularly from the statement of the

investigating officer PW-12, Moti Lal Sharma and the other departmental witnesses examined. Hence the conviction so far as the present appellant under section 20(B)(2)(B) of the N.D.P.S. Act is concerned does not warrant any interference and the same stands confirmed.

7. However, on the issue of the sentence taking into consideration the peculiar facts of the case the appellant being of a young age at the time of commission of the offence and that he has already undergone custody for about more than 5 years and the sentence of 10 years is the maximum sentence which can be imposed upon by the Court and also taking into consideration that there was no past antecedent of the present appellant being involved in any other offence except the present case, the sentence for the period of 10 years deserves to be reduced and therefore the sentence part of the appellant is reduced to the period of 6 years.

8. It is directed that the appellant shall surrender before the concerned trial Court so that he can undergo remaining part of the sentence.

9. With the aforesaid modification in the sentence part the appeal stands dismissed.

10. It is made clear that the fine imposed by the Court below shall remain intact.

Sd/-

(P. Sam Koshy)
JUDGE

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