

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 58 of 2006

1. Ishwari Prasad Sahu S/o Daduram, aged about 50 years, Occupation – Agriculture, R/o- Village-Heerapur, P.S. Pathhalgaon Distt. - Jashpur (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through:- P.S. Pathhalgaon Distt.- Jashpur (C.G.)

---- Respondent

For Appellant – Mr. Neeraj Kumar Mehta, Advocate.
For Respondent – Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

25/01/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04-01-2006 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Jashpur, C.G. in Special Criminal Case No.02/2005 whereby & whereunder the learned Special Judge after holding the accused/appellant guilty for illicit possession of 2 kg. of ganja (1.5 kg of ganja and ½ Kg. of ganja seeds, both inclusive), 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.20,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.
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 information received by the Assistant District Excise Officer, Patthalgaon, D.K.Rathore (PW-8) from the informant that appellant is in illicit business of ganja selling and he is also having sufficient ganja in his house, the Investigating Officer reached to the spot and gave notice to the appellant. After obtaining permission from the appellant for the search of his house by the Investigating Officer, the Investigating Officer himself taken the search and recovered two kg. of ganja (cannabis). He seized the article after taking weight and physical examination. He also prepared the sample packets of 25 grams – 25 grams. The sample packets and remaining ganja were seized and sealed. Thereafter, spot map was prepared. The First Information Report was recorded. The samples were sent to the District Excise Officer, Jashpur with a request for chemical analysis. Remaining seized ganja was kept in Patthalgaon Police Station.

4. After completion of the investigation, charge sheet was filed before the Court below for trial. 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 8 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, he is not contesting the instant criminal appeal regarding the judgment of conviction and he is confining his argument only to the quantum of sentence. As per submission made in this behalf, the quantity of ganja including the seeds was of 2 kg. only and

for the offence under Section 20(b)(ii)B of the NDPS Act, there is no any minimum sentence prescribed. Also the appellant is the first offender with no criminal past, the incident is about 11 years old, at the time of incident the appellant was aged about 50 years, presently he is more than 60 years old and during this period he had not committed any offence of similar nature. During the trial he was in custody from 22-03-2005 to 04-01-2006 and also thereafter he remained in custody till he was granted bail by this Court vide order dated 23-01-2006 thereby he had served the sentence for about 10 months. Looking to the quantity, age of the appellant, and the facts that the appellant was having no previous criminal history, and since about 11 years he had been contesting the trial before the trial Court and he is also contesting the instant criminal appeal thereby he has suffered sufficiently for the offence committed by him, he be given an opportunity and he may be sentenced for the period already undergone by him.

9. On the other hand, learned counsel for the State opposed the arguments advanced in this behalf and supported the impugned judgment passed by the Court below and submitted that on account of facts proved by the prosecution before the trial Court, the Court below rightly convicted and sentenced the appellant for the offence. There is no scope for interference. Therefore, the instant criminal appeal may be dismissed.

10. After minute examination of the evidence adduced by the prosecution before the trial Court and also with the fact that the appellant is not challenging the conviction part of the judgment passed by the trial Court against him, this Court is of the considered view that while convicting the appellant for the offence, the trial Court has not committed any illegality or impropriety. Hence, the judgment of conviction passed by the Court below against the appellant is hereby affirmed.

11. So far as the quantum of sentence is concerned, as prayed and as per record of the case, the appellant remained in jail for more than 10 months, looking to the quantity of the ganja so seized, present age of the appellant, and the facts

that the matter is about 11 years old, no any other criminal activity of the appellant for the similar type of offence shown or proved in the trial, no any minimum sentence prescribed for the offence, even after this incident, no any involvement of the appellant in any crime of similar nature was further reported, in the considered view of this Court, sentencing the appellant to the period of already undergone along with fine of Rs.3000/- would serve the purpose.

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. However, the jail sentence and fine sentence awarded to the appellant are modified and instead of rigorous imprisonment for two years and fine of Rs.20,000/-, the appellant is now sentenced for the period already undergone by him along with fine of Rs.3000/-, in default of payment of fine, the appellant has to serve further rigorous imprisonment for two months. The Court below is directed to recover the fine amount from the appellant, else, he be sent to jail for serving the default period of sentence of fine.

13. The appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E