

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1193 OF 2015**

Gramu Malya Shikari S/o Late Ramdhan Malya Shikari aged about 28 years R/o Matiyari P.S. Seepat Civil and Revenue District Bilaspur (C.G.)

---- Appellant**Versus**

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

---- Respondent

For Appellant	:	Shri K.N. Nande, Advocate
For Respondent-State	:	Shri Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Chandra Bhushan Bajpai, J.
Judgment on Board

25/05/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 4.9.2015, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Bilaspur, Chhattisgarh, in Special Criminal Case No.342/2014, whereby and whereunder the learned Special Judge after holding the accused/appellant guilty for illegal possession of Ganja, the cannabis 11.176 Kg., convicted him under Section 20(b)(ii) (B) of the NDPS Act and sentenced him to undergo R.I. for four years and also to pay fine of Rs.30,000/-, 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 27.8.2014, R.S. Netam (PW-7) (the IO) received an information from the informer about illegal transportation of Ganja. On receiving such information, the IO informed his superior officials. Thereafter IO recorded the information in Roznamcha Sanha and alongwith panch witnesses and other constables, went to the spot as informed, where they met with the accused. After giving his identification and asking the name and address of the appellant, the IO served a notice to the accused/appellant under Section 50 of the NDPS Act wherein he was duly intimated regarding the information received about illegal possession of Ganja and that if he desired, he may be searched before any gazetted officer or before any Magistrate. The appellant consented to be searched by the IO himself. The IO had prepared Talashi Panchnama and thereafter searched the bag which the appellant was having and on physical verification it was found to be Ganja. Thereafter, the IO conducted the entire investigation taken the weight of said Ganja which was found to be 11.176 Kg. in total. Subsequently, the IO lodged First Information Report and prepared sample for chemical analysis. The seized Ganja was kept in the safe custody of Maalkhana. Subsequently, sample was sent for chemical analysis to FSL. The FSL after examination confirmed the presence of Ganja in the sample.

4. After completion of investigation, charge sheet has been filed before the Special Judge, NDPS Act. The appellant was charged for the offence under Section 20(b)(ii)(B) of the NDPS Act. He denied the charge and prayed for trial.
5. In order to prove the guilt of the appellant, the prosecution examined as many as 7 witnesses in all. The accused was examined under Section 313 CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
6. After affording opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as above.
7. I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.
8. Learned counsel for the appellant submits that as per instructions received, the appellant is not contesting the appeal on its merits whereby and whereunder he has been found guilty under Section 20(b)(ii)(B) of the NDPS Act. Learned counsel submits that he is confining his arguments on the question of quantum of sentence only. Learned counsel for the appellant submits that he is first offender, aged about 28 years and he is in jail since 27.8.2014 till date thereby served the sentence for about 1 year and 9 months. He is a poor person and anyhow he is earning livelihood. He will not commit any similar or other offence in future. There is no minimum sentence

prescribed for the offence and he has suffered by lot by languishing in jail for about 1 year and 9 months. It was lastly submitted that looking to the facts and circumstances of the case, the sentence may be reduced to the period already undergone by him and fine sentence also may be reduced.

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, i.e. 11.176 Kg. seized from the conscious possession of the appellant clearly goes to show that he was deliberately transporting the said Ganja for the purpose of sale and illegal use. The trial Court has rightly sentenced the appellant and as such, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.
10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
11. From perusal of the entire facts, it reveals that the appellant is first offender with no criminal antecedents regarding the same offence or any other offence. he is in jail since 1 year and 9 months and only 11.176 Kg of Ganja has been recovered from him. He prays for an opportunity to remain in the society without involvement in any crime in future. Looking to the entire facts and as the appellant is not assailing his conviction, this Court need not go into merits in this regard.

12. So far as perusal of the entire evidence adduced by the prosecution and other facts and circumstances and also taking the arguments advanced on behalf of the appellant, I do not find any illegality or impropriety in the judgment of conviction passed against the appellant. I am of the view that there is no scope for interference with the conviction of the appellant and the conviction part is liable to be affirmed.
13. So far as quantum of fine sentence is concerned, young fellow may be earning his livelihood anyhow, was found with the possession of more than 11 Kg. Ganja, in the considered view, fine sentence awarded to the appellant to the tune of Rs.30,000/- cannot to be excessive on the part and hence I am not inclined to interfere with the fine sentence awarded to the appellant.
14. So far as quantum of substantive jail sentence is concerned, there is no minimum sentence prescribed for the offence; appellant is the first offender; young boy of 28 years, he had prayed that he be given an opportunity so that he may remain in the society following law and served the sentence about 1 year and 9 months, I am of the view by looking to the entire facts and circumstances, substantive jail sentence be reduced for the period already undergone would serve the purpose in the matter and would be sufficient to meet the ends of justice.
15. 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)(B) of the NDPS Act are hereby affirmed.

However, the jail sentence awarded to the appellant is modified/reduced and instead R.I. for four 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.

16. Copy of the judgment may be submitted by the appellant before the trial Court for compliance, as directed.
17. Registrar (Judicial) is also directed to transmit the copy of the judgment immediately for compliance.
18. In view of the above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
Vacation Judge