

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 618 of 2016

1. Smt. Saraswati @ Shouki W/o Anand Dehari (Pujari Mahapatra), aged 45 years, R/o Village Kanvar, Thana Barpali, District Bargarh, Orissa.

---- Appellant

Versus

1. State of Chhattisgarh, through the District Magistrate Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant :- Shri Sunil Sahu, Advocate.
For Respondent :- Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

13/07/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04-04-2016 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Bilaspur, in Special Criminal Case No.349/2015 whereby & whereunder the learned Special Judge after holding the appellant guilty for illegal possession of 4 kg. contraband article ganja, convicted her under Section 20(b)(ii)(B) of the NDPS Act and sentenced the appellant to undergo rigorous imprisonment for 5 years and to pay fine of Rs.15,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 4 months.
2. The conviction is impugned on the ground that without their being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforesaid mentioned and thereby committed illegality.

3. As per case of prosecution, on 01-10-2015, ASI, In-charge, Outpost Pendra Road, G.R.P., Bilaspur, Investigating Officer L.N.Pradhan (PW-8) received information from informant that at platform No.3 one suspect is in illicit possession of ganja. The Investigating Officer duly recorded this information. Panch witnesses were summoned. He had also prepared mukhbir suchna panchnama Ex.-P/1 and search without warrant panchnama Ex.-P/2 and thereafter, informed the superior police official for the act. Thereafter, along with panch witnesses, police party and necessary material he reached to the spot. He saw the accused/appellant and gave her a notice under Section 50 of the NDPS Act, Ex.-P/8. Thereafter, he informed her legal right that she may be searched before Magistrate or a Gazetted Officer or if she wishes the search can be conducted by the said Investigating Officer. The accused/appellant vide consent memo, Ex.-P/9 consented to be searched by the Investigating Officer. Thereafter, he searched the accused/appellant who was having one bag; inside the bag, one packet of some objectionable substance was noticed which was identified as ganja on physical examination. He also prepared physical examination panchnama, Ex.-P/13. Thereafter, he had taken the weight of the said ganja, which was 4 kg. He also took two samples of 50-50 grams; remaining ganja and the samples were duly seized and sealed along with bag. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') He also prepared spot map, Ex.-P/21, and wrote unnumbered First Information Report. Thereafter, at police outpost the First Information Report was duly registered. The accused/appellant was arrested. Sample and the remaining ganja were kept in safe custody in Malkhana. The report of arrest and seizure as required under Section 57 of the NDPS Act was sent to his immediate official superior. Thereafter, samples were sent for chemical analysis to Forensic Science Laboratory, Raipur. On chemical analysis, the Forensic Science Laboratory found the said sample as ganja. After completion of the investigation, charge sheet was

filed before the Special Judge. Learned trial Court framed the charges. The accused/appellant denied the charges.

4. In order to prove the guilt of the accused/appellant, the prosecution examined 8 witnesses in all. The accused/appellant was also examined under Section 313 of the Code in which she denied the circumstances appearing against her and pleaded innocence and false implication in crime in question.

5. After affording opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

6. I have heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

7. Learned counsel for the appellant submitted that he is not contesting the instant criminal appeal so far as judgment of conviction passed against the appellant is concerned; as instructed, he is only contesting this appeal for the quantum of substantive jail sentence. Learned counsel for the appellant further submitted that the accused/appellant is a woman, illiterate, R/o of Bargarh, Orissa; she had not committed any likewise or other offence similar to this incident earlier; she had no any means for her livelihood anyhow she was maintaining her meals. The substantive jail sentence awarded appears to be on excessive side looking to the quantity of ganja so seized and other facts. Considering the entire facts and the fact that she is the first offender, she may be given an opportunity so that she may live in society without involving herself in any of the offence; and also she is serving the sentence since 02-10-2015. It is prayed that substantive jail sentence may be sympathetically awarded in proportionate to the offence and other facts and circumstances.

8. Per contra, learned counsel for the State/respondent opposed the argument advanced and would submit that though the accused/appellant is a lady, first offender, she belongs to a different State and was found in illicit possession of 4 kg. ganja which shows her intention; with this, the trial Court has rightly convicted

and sentenced the accused / appellant which do not require any interference. Hence, the instant criminal appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced on behalf of the prosecution during the trial.

10. Upon perusal of the entire evidence especially the evidence of the Investigating Officer L.N.Pradhan (PW-8), other witnesses and the FSL report, it appears that the prosecution had proved beyond reasonable doubt that on the date of incident the accused/appellant was in illicit possession of 4 kg. ganja. With this, the judgment of conviction passed by the trial Court against the appellant/accused does not require any interference, hence, the same is affirmed.

11. So far as fine sentence awarded by the trial Court is concerned, looking to the offence, contraband article so seized, it cannot be held that fine sentence of Rs.15,000/- is on higher side. This Court is of the view that the trial Court has rightly awarded above mentioned fine sentence to the appellant/accused which also does not require any interference; and as such, fine sentence awarded by the trial Court to the appellant is also hereby affirmed.

12. So far as quantum of substantive jail sentence is concerned, the accused/appellant has been sentenced to undergo rigorous imprisonment for five years, the incident is about 9 months old, the accused/appellant is a woman, illiterate and unemployed, R/o District Bargarh, Orissa; during investigation, the Investigating Officer failed to collect any offence regarding her previous criminal antecedent, with this, she is the first offender. Looking to the entire facts and as prayed on behalf of the appellant that she will not commit any likewise offence in future, this Court is of the view that substantive jail sentence is on higher side and the same requires interference. In view of this Court, rigorous imprisonment of one year would serve the purpose looking to the offence committed by the accused/appellant with other circumstances and facts.

13. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the accused/appellant under Section 20(b)(ii)(B) of the NDPS Act passed by the trial Court is hereby affirmed. Fine sentence awarded by the trial Court is also affirmed. So far as the jail sentence awarded to the accused/appellant by the trial Court is concerned, the same is reduced and modified and instead of rigorous imprisonment for five years, the accused/appellant is sentenced to undergo rigorous imprisonment for one year. The accused/appellant is serving the sentence from 02-10-2015 till date. Authorities are directed to serve the substantive jail sentence modified and reduced by this Court, also directed to serve the fine sentence affirmed by Court and in default she may be served with default sentence.

14. Appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E