

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.164 of 2015**

Rohi Das, S/o. Lambu Meher, aged about 34 years, R/o. Village Surisomal, PS Junagarh, District Kalahandi (Orissa)

----Appellants**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station GRP Bilaspur, District Bilaspur (CG)

--- Respondent

For the Appellant	: Dr. Shailesh Ahuja, Advocate.
For the Respondent	: Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****11.7.2016.**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.11.2014 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'The NDPS Act'), Bilaspur, (CG) in Special Case No.131/2014 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 10 kg of contraband article ganja, convicted him under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.15,000/-, in default of payment of fine, to further undergo RI for four months.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and

sentenced the appellant as aforementioned, thereby committed illegality.

3. As per the case of the prosecution, on 22.4.2014, Sub Inspector SL Navratna (PW-10), Station House Officer GRP Bilaspur, received information from informant that in Bilaspur Railway Station at Platform No.7 & 8 at Katni End, two suspected persons were carrying ganja in a bag. He registered the said information in rojnamchasanha (Ex-P/28). Witnesses were requisitioned, thereafter mukhbir suchana panchnama and search without proper authentication (Ex-P/13 & 14) were prepared. Thereafter investigating team proceeded along with panch witnesses and staff to the spot. They saw the accused appellant on the spot. On being enquired, the appellant told his name. The appellant was informed about his legal right under Section 50 of the NDPS Act to be searched by any gazetted officer or by Executive Magistrate. Consent of the appellant regarding search was recorded vide Ex-P/16. Thereafter the accused was duly searched. He was carrying a bag in which some objectionable substances were found. The said substance was noticed as ganja in physical examination. Thereafter the said ganja was duly seized, weighed, weight of the ganja was found 10 kg. Sample A/1 and A/2 were taken out. The samples and the remaining ganja were properly sealed. The accused appellant was arrested. FIR (Ex-P/36) was lodged. Ganja and the samples were kept with malkhana moharrir for safe custody and thereafter during

investigation, samples were sent for chemical examination analysis to FSL Raipur. The FSL gave its report (Ex-P/41) and the presence of cannabis was found positive in the analysis. After due investigation, charge sheet was filed before Special Judge.

4. In order to prove the guilt of the appellant, the prosecution has examined as many as 10 witness in all. The appellant was examined under Section 313 of the Code, wherein he denied the circumstances appearing against him, 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 counsel for the parties and perused the record of the court below,

7. Learned counsel for the appellant submits that as instructed, he is not assailing the criminal appeal with respect of judgment of conviction and he is confining his arguments only on the point of sentence. Learned counsel for the appellant would submit that the appellant is the first offender, resident of Kalahandi, Orissa, aged about 34 years, He is a labour by profession and earning his livelihood anyhow. He is in jail since two years two months and 19 days. He is ready to deposit the entire fine amount, he will not commit any offence in future. He be given opportunity to remain in society without committing any further offence. There is no minimum sentence prescribed for the

offence committed by the appellant and looking to the entire facts and circumstances, he be sentenced accordingly.

8. Learned counsel for the respondent/State duly supported the impugned judgment of conviction and sentence and would submits that the judgment of conviction and sentence are well founded. There may not be scope of any interference, hence, instant criminal appeal may be dismissed.

9. To consider the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during the trial.

10. As regards the question of order of conviction against the appellant, on perusal of the entire records and judgment and also as submitted, the appellant is not assailing the criminal appeal regarding his conviction. I do not find any illegality or infirmity in the findings of the trial Court regarding conviction of the appellant, hence the same is not required any interference. Consequently, judgment of conviction against the appellant passed by the trial Court is hereby affirmed.

11. So far as the quantum of sentence are concerned, the appellant has served the sentence of two years two months and 19 days till date. He is the first offender, he is a labour by profession as per the arrest memo. During investigation, the prosecution has not noticed any earlier involvement of the appellant in any of the offence and also there is no minimum

sentence prescribed for the offence committed by the accused appellant.

12. On due consideration, looking to the entire facts and circumstances, it would be appropriate to affirm the fine sentence awarded by the trial Court and instead of RI for five years, the period already undergone would serve the purpose.

13. Consequently, the instant appeal is partly allowed. Conviction of the appellant under Section 20(b)(ii)(B) of the Act is hereby affirmed. Fine sentence awarded by the to the appellant is also affirmed. However the jail sentence awarded to the appellant is modified and instead of RI for five years, he is sentenced to undergo imprisonment for the period already undergone by him. The appellant is in jail. After depositing the fine amount, he be released forthwith. If the fine amount is not deposited, he be served with default sentence as ordered by the trial Court.

14. The appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE