

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 512 of 2015

1. Anil Vishwakarma S/o Ghanshyam Vishvakarma, aged about 22 years, R/o Village- Basaari, P.S.- Gadhakota, Civil and Revenue District- Sagar (M.P.)

---- Appellant

Versus

1. State of Chhattisgarh Through:- Police Station, G.R.P. Bilaspur, Civil and Revenue District- Bilaspur, Chhattisgarh

---- Respondent

For Appellant :- Shri V.C.Ottalwar, Advocate.
For Respondent :- Shri Aadil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

11/07/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 18-02-2015 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Bilaspur, in Specia NDPS Case No.388/2014 whereby & whereunder the learned Special Judge after holding the appellant guilty for illegal possession of 6 kg. ganja (canabis), convicted him 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.5000/-, in default of payment of fine, to further undergo rigorous imprisonment for 3 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 15-09-2014, SHO, G.R.P. Bilaspur and Investigating Officer S.L.Navratna (PW-8) received information from informant that at remote end of platform No.7 and 8 towards Katani a suspect having ganja in air bag looking for train to proceed. The said information was registered by the Investigating Officer in rojnamcha sanha. Panch witnesses were summoned and thereafter, the Investigating Officer along with police staff and panch witnesses came to the spot and saw the suspect, i.e., the accused/appellant. He gave his introduction and also served him with notice under Section 50 of the NDPS Act (Ex.-P/13) and also informed him regarding his legal right to be searched before Executive Magistrate or a Gazetted Officer or if he wishes the search can be conducted by the said I.O. The accused/appellant consented to be searched by the Investigating Officer by letter of consent (Ex.-P/14). Thereafter, the Investigating Officer duly searched the accused/appellant who was having an air bag in his exclusive possession. In the said air bag some objectionable substance was noticed which was found ganja in physical examination. Thereafter, the Investigating Officer duly seized, took sample from the said ganja and sealed the material. After taking weight, the ganja was found 6 kg. Thereafter, at police station, he registered the First Information Report against the accused/appellant. The accused/appellant was duly arrested vide arrest memo Ex.-P/24. He also recorded the statement of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') and prepared the map. The samples were sent for chemical analysis to Forensic Science Laboratory, Raipur who in turn gave his analysis report and confirmed the presence of ganja in the said samples as Ex.-P/40. After completion of the investigation, charge sheet was filed before the Special Court wherein the charge was framed and the trial was conducted.

4. In order to prove the guilt of the accused/appellant, the prosecution examined 9 witnesses. The accused/appellant was examined under Section 313

of the Code in which he denied the circumstances appearing against him 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 trial court.

7. Learned counsel for the appellant would submit that, as instructed, he is not contesting the instant criminal appeal so far as judgment of conviction passed against the appellant is concerned. He is only contesting this appeal for the quantum of sentence. Learned counsel for the appellant would submit that the accused/appellant is the first offender, he is aged about 22 years and reported to be labour and is resident of District Sagar, M.P.; he had never committed any similar or other offence; he is in jail since about 1 year and 10 months. Looking to his age and other facts, he may be given an opportunity, he will not commit any offence in future.

8. Per contra, learned counsel for the State/respondent opposed the argument advanced in this behalf and submitted that looking to the entire facts and circumstances, quantum of ganja so seized from the exclusive possession of the accused/appellant, the judgment of conviction and the order of sentence both are well founded. Hence, the appeal may be dismissed.

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

10. Upon perusal of the entire evidence oral and documentary and appreciation of the said evidence by the trial Court, I do not see any illegality or infirmity with the judgment of conviction passed against the appellant, also fine sentence awarded by the trial Court is not on higher side. Learned counsel for the accused/appellant, as submitted, is not challenging the judgment of conviction. With this, the judgment of conviction passed by the trial Court against the

accused/appellant as well as fine sentence awarded to the accused/appellant by the trial Court require no interference. Hence, they are affirmed.

11. So far as quantum of jail sentence is concerned, there is no any minimum sentence prescribed for the offence committed by the appellant. The accused/appellant is aged about 22 years, labour by profession. The Investigating Officer not noticed any past criminal antecedent of the accused/appellant, it goes to show that he is the first offender. He is in jail for about 1 year 10 months till date. With this, in the considered view of this Court, the sentence already undergone by the accused/appellant would serve the purpose looking to the entire facts in the given circumstances and facts.

12. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act and also fine sentence awarded by the trial Court are hereby affirmed. However, the jail sentence awarded to the accused/appellant is hereby modified and instead of rigorous imprisonment of 5 years, the appellant is sentenced to the period already undergone by him. It is stated that the appellant is in jail. He be released forthwith after deposit of fine amount imposed by the trial Court. If fine amount is not deposited, the authorities are directed to serve the default sentence to the accused/appellant.

13. Appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E