

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 721 of 2015

- Rupesh Raikwar S/o Shri Shanker Raikwar Aged About 20 Years R/o Village Sunwahi, Police Station Tejgarh, District Damoh (M.P.).

**---- Appellant
In Jail**

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station GRP Bilaspur, District Bilaspur Chhattisgarh.

---- Respondent

For appellant : Shri Ashok Dixit, Advocate.

For Respondent : Shri V. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

15/03/2016

This appeal arises out of the judgment of conviction and order of sentence dated 4.4.2014 passed by the Special Judge (N.D.P.S. Act), Bilaspur in Special Case No.26/2013, convicting the accused/appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing him to undergo RI for 5 years and to pay a fine of Rs.5,000/- with default stipulation.

02. Facts of the case in brief are that on 29.7.2013 a secret information was received by Sub Inspector SL Navratna that one person carrying Ganja for the purpose of sale is sitting in railway platform No. 2 & 3 and is trying to move by train, the said information was reduced to writing in Rojnamchasanha vide Ex.P/18C; notices to the witnesses were sent vide Ex.P/1 & P/2, the same was entered in daily diary vide Ex.P/19C, secret information panchanama was prepared vide Ex.P/4, search panchanama without warrant was prepared vide Ex.P/5, the

information was passed on to the superior officer and thereafter, the police officers along with witnesses reached the place of occurrence, notice under Section 50 of the Act was given to the appellant vide Ex.P/6, his consent was obtained vide Ex.P/24, personal search of the witnesses and the police party was made by the appellant vide Ex.P/3, on which nothing was found from them. On personal search of the appellant vide Ex.P/11, he was found in possession of a bag containing six packets, each weighing 1 kg, and on its examination by smelling, burning and rubbing, it appeared to be narcotic substance Ganja. Thereafter, homogeneous panchanama of the contraband and panchanama of weighing balance and the weight were prepared in presence of witnesses vide Ex.P/12 and P/13 respectively. On weighment vide Ex.P/14, the contraband was found to be 6 kg; two samples of 50-50 gm drawn from it were marked as A1 & A2 and sealed. After returning to police station, the seized contraband was deposited in Malkhana vide Ex.P/7C, FIR was registered against the appellant vide Ex.P/28 and the appellant was arrested vide Ex.P/17. Seized articles were sent for chemical examination to FSL, acknowledge of which is Ex.P/9 and FSL report Ex.P/29 is positive. After completion of investigation, charge sheet was filed under Section 20B of the Act against the appellant and thereafter, charge under Section 20(b)(ii)(B) of the Act was framed.

03. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded

innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that he is not pressing this appeal on merits and would confine his arguments to the sentence part only. He submits that there is no criminal antecedent of the appellant, this is the first offence under N.D.P.S. Act alleged against him; he is a young boy of 20 years from Damoh (M.P.), is languishing in jail since 29.7.2013 and therefore, taking a lenient view his sentence may be reduced to the period already suffered by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant as well as the sentence imposed thereunder are strictly in accordance with law and there is no infirmity in it warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Parvatrao Pawar, Constable, had called two witnesses after being instructed by his superior officer and gave them notices under Section 164 of Cr.P.C. vide Ex.P/1 & P/2. He is also a member of the raiding party and has duly supported the prosecution case. PW-2 Ram Kumar Manjre, Head Constable, prepared the secret information panchanama and panchanama of arrest without warrant. PW-3 Biharilal Netam, Constable, forwarded the information to the superior

officers. PW-4 Roop Kishore Sen, Head Constable, deposited the contraband in Malkhana, proved Malkhana register and sent samples to FSL. PW-5 Durgesh Dwivedi, Constable, deposited the sample in FSL. PW-6 Dinesh Ahirwar, independent panch witness has not fully supported the prosecution case. PW-7 SL Navratna, investigating officer, has duly supported the prosecution case.

09. Close scrutiny of the evidence makes it clear that on receipt of secret information on 29.7.2013, the police party along with the witnesses reached the place of occurrence and after completing the necessary formalities as required under the Act made search of the appellant and recovered the contraband Ganja, which on weighment came to be 6 kg. Though PW-6 Dinesh Ahirwar, independent panch witness, has supported the prosecution case in examination-in-chief but has not supported in cross-examination. If the evidence of the investigating officer (PW-7 SL Navratna) is seen, he has consistently deposed in the Court about the entire proceedings conducted against the appellant, like receipt of secret information, its entry in Rojnamchasanha, calling of witnesses, search of the policy party, witnesses as well as the appellant, recovery of contraband from the appellant, its weighment and sending of information to the superior officer etc. His evidence stands corroborated from the evidence of PW-1 Parvatrao Pawar, PW-2 Ramkumar Manjre and PW-3 Bihariram Netam. As per evidence of PW-4 Roop Kishore Sen, Head Constable, and PW-5 Durgesh Dwivedi, Constable, the contraband was duly deposited in the Malkhana, the samples were sent to FSL and deposited in FSL. As per FSL report Ex.P/29 the contraband was found

to be Ganja. Thus, from the documents and the evidence of the aforesaid witnesses, compliance of Section 42 and 50 of the Act is proved.

10. For the reasons stated above, this Court is of the considered opinion that conviction of the appellant under Section 20(b)(ii)(B) of the Act is based on proper appreciation of the evidence, calling for no interference.

11. As regards the sentence, keeping in view the facts and circumstances of the case, quantity of the contraband, the fact that at the time of incident the applicant was a young boy of 20 years, he has no past criminal record and is behind the bars since 29.7.2013, in my opinion, sentence of five years' RI imposed upon him by the trial Court appears to be on higher side and the ends of justice would be served if he is instead sentenced to RI for 3 years, while maintaining the fine amount with default stipulation imposed by the trial Court.

12. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 20(b)(ii)(B) of the Act, he is sentenced to undergo RI for three years. However, imposition of fine amount with default stipulation as has been made by the trial Court shall remain intact.

Sd/

(Pritinker Diwaker)

Judge