

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 867 of 2015

- Ram Kishore Rajak S/o Tulsi Ram Rajak Aged About 34 Years R/o Bahuripara, P.S. & District Narsinghpur (M.P.)

---- Appellant

Versus

- State Of Chhattisgarh Through: Police Station Darbha, District Bastar, Chhattisgarh

---- Respondent

For Appellant	Mr. S.C. Verma, Advocate
For Respondent /State	Mr. Anupam Dubey, Dy. G.A.

HON'BLE The Vacation Judge

JUDGMENT

26/5/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14.07.2015, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Jagdalpur Chhattisgarh, in Special Case No.03/2014, whereby and where-under the learned Special Judge after holding the accused/appellant guilty for illegal possession of 11 Kg of Ganja, 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.4,000/-, in default of payment of fine

to further undergo additional R.I. for four 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 29.03.2014, at about 9.30 am, Mr. Pramod Shrivatava (PW-11) was working as ASI at Police Station Darbha District Bastar. The SHO received an information from the informant regarding transporting of illegal substance Ganja by few persons and that they are travelling in a bus. The information of the informant was duly recorded by the then SHO in the *Roznamchasana* and thereafter, Investigating Officer (for brevity "the IO"), PW-11, alongwith other police staffs and the Panch witnesses reached to the spot and in the said bus, gave him notice and he further informed the legal rights of the appellant that if he wishes the search may be conducted in presence of Magistrate/Gazetted Officer or by the IO himself. The appellant consented to be searched by the IO himself. Thereafter, PW-11 Pramod Shrivastava made search. After the search in presence of the witnesses and the police personnel, the I.O. noticed some illegal substance. On physical examination, the said substance was identified as Ganja and thereafter, the bag and the said substance were duly recovered, searched and weight for that substance was

taken. The said Ganja was 11 Kg. The I.O. duly draw the sample and sealed the same. The seized Ganja was kept in the safe custody of Maalkhana. Subsequently, the sample was sent for chemical analysis to FSL. The FSL after examination confirmed the presence of Ganja in the sample. The inventory of the seized articles was duly prepared and also conducted the proceedings for preparation of the said inventory, photographs and the other matter, as required under Section 52-A of the NDPS Act.

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 11 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 submits that the appellant is the first offender, no criminal antecedents reported or surfaced in the charge sheet. The appellant is in custody since 29.03.2014 till date, thereby, he served the sentence for about 2 years 2 months. 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 2 years and 2 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. Learned counsel would submit that the appellant will deposit the fine amount, if not deposited. The appellant be given an opportunity to remain in the society without committing any breach of law. Hence, he be accordingly sentenced.

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 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 the first offender with no criminal antecedents regarding the same offence or any other offence, he is in jail since 2 years and 2 months and only 11 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 as well as fine sentence, 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 and imposition of fine sentence 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 and fine part is liable to be affirmed.

13. So far as quantum of jail sentence is concerned, the

appellant construed that he will deposit the fine amount if not already deposited and he also prayed that as he served the sentence for about 2 years 2 months, there is no minimum sentence prescribed, he had prayed that he be given an opportunity so that he may remain in the society following law, 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.

14. 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.

15. Copy of the judgment may be submitted by the appellant before the trial Court for compliance, as directed.

16.Registrar (Judicial) is also directed to transmit the copy of the judgment immediately for compliance.

17.In view of the above, the appeal is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
Vacation Judge

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