

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1411 OF 2015

Ashish Soni, S/o Shri Brijkishore Soni, aged 24 years, R/o Mission Chowk
Kedarpur, Thana- Ambikapur, Civil & Revenue District Surguja (C.G.)

... Appellant

Versus

State of Chhattisgarh, through the District Magistrate, Ambikapur, District
Surguja (C.G.)

... Respondent

For Appellant	:	Mr. Sunil Sahu, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

17/11/2016

1. The Appellant stands convicted and sentenced to undergo R.I. for 10 years and to pay fine of Rs.1,00,000/- and in default of payment of fine amount to undergo additional R.I. for 1 year under Section 21(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act' in short), as ordered on 23.9.2015 by the Special Judge (NDPS Act), Ambikapur, District Surguja in Special Criminal Case No. 16 of 2014.

2. Brief facts of the case as per the prosecution is that on 3.7.2014 at around 6pm, PW-7, V.K. Awasthi, the Investigating Officer, received a secret information in respect of the present Appellant involved in the selling of the contraband, brown sugar, and that he was looking for customers. Subsequently, after the completion of all the formalities under the NDPS Act, the police officials conducted a raid and in the presence of the witnesses caught the present Appellant and he was subjected to search near Kedarpur Mission Chowk. During the course of the search it was found that the Appellant in his pocket was carrying brown sugar weighing 10.410 gram. After completion of the mandatory statutory requirements

under the NDPS Act, charge-sheet was filed and the matter was put to trial before the Special Judge (NPDS Act), Ambikapur where the case was registered as Special Criminal Case No. 16 of 2014. Charge under Section 21(B) of the NDPS Act was framed against the Appellant.

3. During the course of trial, the prosecution examined as many as 7 witnesses in support of its case. There was no witness examined in defence. That among the independent witnesses one witness had died before he could be examined and the other witnesses have turned hostile and not supported the case of the prosecution. Relying upon the evidence of the departmental witnesses, the Court below vide impugned judgment found the Appellant to be guilty of having committed the offence under Section 21(B) of the NDPS Act and sentenced him to undergo R.I. for 10 years and to pay fine of Rs.1,00,000/- with default stipulation, leading to the filing of the present appeal.

4. Shri Sunil Sahu, learned Counsel for the Appellant, at the outset submits that he does not intend to argue the case on merits so far as the conviction of the Appellant in the instant case under Section 21(B) of the NDPS Act is concerned. He makes a specific prayer that this Court may consider on the question of sentence which has been imposed by the Court below. According to him, the Court below on both aspects on sentence as well as on fine has awarded the maximum that has been prescribed under Section 21(B) of the NDPS Act. He further submits that it is a case where the Appellant is said to have found in possession of 10.410 gram of brown sugar and the said quantity is more than the small quantity and less than the commercial quantity. According to the Counsel for the Appellant, the small quantity as per the NDPS Act is 5 gram and the commercial quantity as per the Act is 250 gram. That the Appellant has exceeded by only 5.410 gram from that of the small quantity and that the

punishment which has been imposed upon the Appellant is exorbitant, highly excessive and harsh for the reason that for 5 gram of contraband the Act itself stipulates the maximum sentence of one year and that if the said quantity exceeds by another 5 gram as as happened in the instant case as the quantity seized was 10.410 gram, as such, the excess is of 5.10 gram more than small quantity of 5 gram, the maximum sentence which should have been imposed should be somewhere around two years. According to the Counsel for the Appellant, when for 5 gram the maximum is 1 year, therefore for 10 gram the maximum should be around 2 years.

5. It was further contended by the Counsel for the Appellant that the Appellant has already remained in custody for a period of two years and four months and as such he has remained in custody for a sufficient long time, therefore the sentence part imposed upon him may be reduced to the period already undergone. He has also made a prayer for the reduction in the payment of fine part as has been imposed by the Court below as the fine also which has been imposed is the maximum prescribed under the NDPS Act and for the amount of brown sugar which has been exceeded more than the small quantity by 5 gram the fine could not have been Rs.1 Lakh but it should have been only in the ratio of Rs.10,000/- for every 5 gram of brown sugar, i.e., the maximum for the small quantity, and therefore it should be somewhere around Rs.20,000/-. He thus prayed for the reduction of the fine also, and modification of the judgment accordingly.

6. Ms. M. Asha, learned Counsel for the State, opposes the appeal and the prayer made by the Appellant, on the ground that the contraband which was seized from the possession of the Appellant was brown sugar and that the quantity also was more than the small quantity of contraband which was prescribed under the NDPS Act, therefore if the Act does prescribe for the sentence maximum up to 10 years and fine of Rs.1 Lakh, it cannot be

said that the Court below has committed an error granting maximum punishment. The State Counsel further argues that the maximum sentence is imposed so that it can be taken as a deterrent by the others also, and therefore prayed for the rejection of the appeal.

7. Having considered the rival contentions put forth on either side and on perusal of the records what clearly reflects from the factual background of the case is that the Appellant in the instant case has been imposed with the maximum of the sentence both on the point of substantive sentence and also on the point of fine. Another aspect which has to be borne in mind is the fact that the quantity of brown sugar seized from the possession of the Appellant is only 10.410 gram of brown sugar. The small quantity under the NDPS Act prescribed is 5gram and for 5gram the maximum sentence fixed under the Act is one year with fine of maximum Rs.10,000/-. Thus, the punishment for the quantity of brown sugar seized from the possession of the Appellant, that is, 10.410 gram, should had been proportionately awarded by the Court below in stead of blindly awarding the maximum which has been awarded under the Act. Keeping in mind the fact that in the instant case the conviction has been made relying only upon the departmental witnesses and that the independent witnesses have not supported the case of the prosecution, this Court is of the opinion that the sentence awarded by the Court below of R.I. for 10 years is highly excessive and harsh and the same deserves to be reduced. However, taking into consideration the nature of crime and the substance seized, the fine amount awarded does not require any alteration.

8. Thus, considering the fact that the Appellant was found to be in possession of just 5.410 gram of more than the small quantity but less than the commercial quantity and that the total quantity found from his possession was 10.410 gram of brown sugar, this Court is of the opinion

that the ends of justice would meet if the sentence awarded is reduced, and the same is accordingly reduced to period of three years. However, the fine amount imposed by the Court below is ordered to be remain intact.

9. With the aforesaid modification of sentence, the appeal is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/