

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 76 of 2013**

Bhagwan Khemandu S/o Rama Khemandu Aged About 20 Years
R/o Raipur , P.S. Chitrakonda , Distt. Malkangiri (Orissa)

---- Appellant**Versus**

Union of India through - SHO, G.R.P. , Distt. Bilaspur C.G.

---- Respondent

For appellant	:	Mr. Ajay Ayachi, Adv.
For Respondent/State	:	Ms. Shobha Kashyap, Dy. Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****10/11/2016**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14-12-2012 passed by the Special Judge, Bilaspur (under Narcotic Drugs and Psychotropic Substances Act, 1985) in Special case No. 31/2011 whereby and whereunder learned trial Court after holding the appellant guilty for illicit possession of 12 Kg. of Ganga convicted the appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity the NDPS Act) and sentenced him to undergo RI for 6 years and also to pay a fine of Rs. 6,000/- and in default of payment of fine to further undergo additional RI for 3 months.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per the case of the prosecution, on 10-7-2011, SHO GRP,

Bilaspur K.C. Day (P.W. 10) received an information from the informant that three persons aged about 20 to 40 years keeping Ganja are looking for train to proceed to Katni at the platform No. 6 and 7. On receiving such information, he prepared the informant panchnama Ex. P-3. After service of notice to Panch witnesses vide Ex. P-1 he prepared search Panchnama vide Ex. P-4 and thereafter made search entry in the Rojnamcha Sanha vide Ex. P-13-C. The concerned SHO along with P.W. 9 R.N. Manhare, sub-inspector and other police officials reached to the spot along with necessary kit required for investigation. As directed, P.W. 9 after his introduction gave notice to the appellant under Section 50 of the NDPS Act vide Ex. P-8 as the appellant was noticed in a suspicious condition and having a bag with. The appellant consented to be searched by P.W. 9 R.N. Manhare vide consent letter Ex. P-5. The appellant was informed that if he wish he may be searched before the Magistrate or gazetted officer. Thereafter the accused made search of P.W. 9 R.N. Manhare, the staff and witnesses thereafter search panchnama Ex. P-9 was prepared. When they took search of the bag kept by the appellant, they noticed some objectionable substance. On physical examination same was found as Ganja thereafter they prepared two samples out of it. They also weighed the said Ganja which was found 12 kg. Said Ganja was seized. The samples were also seized after sealing the same vide Ex. P-11. Thereafter the appellant and the contraband article was taken to the concerned police station where the IO P.W. 9 R.N. Manhare duly recorded FIR Ex. P-17, kept Ganja and samples in the Malkhana vide Ex. P-6. Thereafter the higher official were informed about

the entire proceedings vide Ex. P-18. Said samples were sent for FSL vide memo of Superintendent of Police Ex. P-19. Later the report was received vide Ex. P-20 confirming the presence of Ganja in the said samples. Statements of the witnesses under Section 161 of the Cr.P.C. were recorded. After completion of the investigation, charge sheet was filed before the concerned Special Judge who in turn framed the charges against the appellant under Section 20(b)(ii)(B) of the NDPS Act. The accused denied the charges.

4. In order to prove the guilt of the appellant, prosecution examined 10 witnesses. One Premraj Chand, Sub-Inspector was also examined as court witness. Statement of the appellant under Section 313 of the Cr.P.C. was recorded wherein he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the crime in question.
5. After hearing both the parties, learned trial Court convicted the appellant under Section 20(b)(ii)(B) of the NDPS Act and sentenced as aforementioned.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. Learned counsel for the appellant vehemently argued that he is not assailing conviction of appellant under Section 20(b)(ii)(B) of NDPS Act and is confining his argument only on the point of quantum of sentence. He submits that the appellant was aged about 20 years at the time of incident. He was not having any criminal antecedent prior to the incident. He has remained in jail for 5 years and 4 months out of total sentence of 6 years. The appellant is a marginal farmer and earned his bread anyhow prior

to the incident. Looking to the entire facts and circumstances of the case he may be sentenced to the period already undergone by him.

8. On the other hand, learned counsel for the respondent/State supported the impugned judgment, opposed the arguments advanced by learned counsel for the appellant and submitted that the appellant is a resident of district Mankangiri, Orissa and he was caught hold along with 12 kg of Ganja at the railway platform which shows that the said Ganja was for the purpose of transportation and sale. Hence the appeal may be dismissed on all counts.
9. In order to appreciate the arguments advanced on behalf of the respective parties, I have perused the evidence adduced on behalf of prosecution.
10. Learned counsel for the appellant has not contested this appeal on the merit of the case. Even otherwise, upon consideration of the entire evidence, it appears that the trial Court has not committed any illegality or impropriety while convicting the appellant for possessing 12 kg of Ganja under Section 20(b)(ii) (B) of the NDPS Act. Consequently, conviction part against the appellant requires no interference hence affirmed.
11. So far as fine sentence is concerned, the appellant has been sentenced to pay a fine of Rs. 6,000/-. On due consideration, looking to the quantity of Ganja seized from the custody of the appellant, the fine of Rs. 6,000/- does not appear to be on higher side and the same is also maintained.
12. So far as jail sentence awarded to the appellant is concerned, the appellant has been sentenced to undergo RI for 6 years. He has

served sentence of 5 years and 4 months till date. At the time of incident he was aged about 20 years with no criminal antecedents. The incident is about more than 5 years old. Looking to the entire facts and circumstances of the case and also that there is no minimum sentence prescribed for the offence, in the opinion of this Court, ends of justice would be served if the appellant is sentenced to the period already undergone by him.

13. Consequently, the appeal is partly allowed. Appellant's conviction under Section 20(b)(ii)(B) of the NDPS Act is affirmed. Fine sentence of Rs. 6,000/- is also maintained. However, instead of 6 years year's RI, the appellant is sentenced to the period already undergone by him.
14. The appellant be released forthwith if not required in any other case and if he has deposited fine amount. If fine amount is not paid, he shall serve the sentence as per default clause mentioned in para 25 of the judgment of the trial Court.
15. Certified copy of the judgment may be furnished on behalf of the appellant before the concerned authority for compliance.
16. Registrar Judicial is also directed to send a copy of the judgment to the Court below immediately.

Sd/-
(Chandra Bhushan Bajpai)
Judge