

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 540 of 2015

Judgment reserved on : 09.11.2016

Judgment delivered on : 16.11.2016

- Sheikh Jafar, S/o Sheikh Ramjan, aged about 25 years, R/o Near Bengali Panja Lady, house of Jebeda Bee, Near Arjun Kirana Store, Police Station Panchkoli, District Nagpur (Maharashtra)

---- Appellant (In jail)

Versus

- State of Chhattisgarh through Station House Officer, Police Station GRP Raipur, District RAipur (CG)

---- Respondent

For Appellant : Shri AD Kuldeep, Advocate

For Respondent/State : Shri Sanjeev Pandey, GA

Hon'ble Shri Justice Anil Kumar Shukla

CAV Judgment

- 1) The appellant has preferred the present appeal against the judgment of conviction and order of sentence dated 30.04.2014 passed by the learned Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the Act, 1985), Raipur, district Raipur (CG) in Special Criminal Case No.35 of 2013, whereby the appellant was convicted for the offence punishable under Section 20(b)(ii)(B) of the Act, 1985 and sentenced to undergo four years rigorous imprisonment with fine of Rs.20,000/-, in default of payment of fine, additional RI for one and half year.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3) As per case of the prosecution, on 07.09.2013 Inspector Shankar Chandrakar received a secret information by an informant that a man aged between 22-24 years was having two bags of Ganja for sale and was sitting at Raipur railway station on plot-form 1A, near water cooler. On receiving this information, Informant Panchnama vide Ex.P/1 was prepared by the Inspector before the witnesses and without warrant, Inquest Panchnama was prepared vide Ex.P/2. On reaching the spot, Investigating Officer gave notice to the appellant under Section 50 of the Act, 1985 vide Ex.P/3. Appellant - Sheikh Jafar gave consent for inquest vide Ex.P/4. Physical verification of Police Officer and staff was made vide Ex.P/5. On taking search, the accused/appellant was found in possession of 12 kg Ganja in different bags. Ganja was duly weighed and various memos were prepared. Finally, FIR was prepared vide Ex.P/17 and the appellant was arrested. Two samples were taken from the seized Ganja and after sealing the entire Ganja and samples, property was handed over to Head Constable Dharamraj Dhruv (PW-6) to deposit the same in the Malkhana. Thereafter, the samples were sent to Forensic Science Laboratory, Raipur vide Ex.P/11 on 09.09.2013 and a report thereof is recorded vide Ex.P/22 in which the seized substance was found to be Ganja.

4) Statements of the witnesses were recorded under Section 161 of the Cr.P.C., and after completion of investigation, charge-sheet was filed before the Special Judge, Raipur.

5) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 9 witnesses. The appellant was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed his innocence and false implication in the crime in question.

6) After providing opportunity of hearing to the parties, learned Special Judge, Raipur has convicted and sentenced the appellant as aforementioned.

7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8) At the outset, counsel for the appellant submits that in light of evidence of the witnesses available on record, he is not disputing the conviction, but considering the age of the appellant and the fact that the appellant is in jail for about three years, the sentence requires re-consideration. Therefore, looking to the custody period of the appellant, his sentence may be reduced to the period for which he remained in the custody and fine amount may also be reduced.

9) On the other hand, learned State counsel supported the judgment impugned.

10) Looking to the submissions made by learned counsel for the parties and facts and circumstances of the case, it is apparent that the appellant does not want to challenge the conviction directed against him but prays for reduction of the sentence. The appellant remained in jail for near about three years and the total sentence

awarded to him was four years. Therefore, the prayer of learned counsel for the appellant appears to be acceptable, as only one year is left for completion of his sentence.

11) In my view, considering all the facts and circumstances of the case, it would be appropriate that while maintaining the fine amount imposed upon the appellant, if the jail sentence is reduced to the period for which he remained in jail, that would meet the ends of justice.

12) Accordingly, the appeal filed by the appellant is hereby partly allowed. The conviction directed against the appellant for the offence punishable under Section 20(b)(ii)(B) of the Act, 1985 is hereby maintained but, jail sentence is reduced to the period which he has already undergone in the custody. Fine amount imposed against him shall remain as it is meaning thereby, he shall pay fine amount of Rs.20,000/-, in default of payment of fine, shall remain in jail for additional one half year.

13) It is stated that the appellant is in jail, therefore, the office is directed to arrange for issuance of a super-session warrant, so that the appellant may be released from the jail as early as possible, on depositing the fine amount.

Sd/-

(Anil Kumar Shukla)
JUDGE