

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1108 of 2014**

Dinesh Meher, son of Natthu Ram Meher, aged about 22 years, R/o. Village Naktiguda, Police Station Junagarh, Revenue and Civil District Kalahandi (Orissa)

---- Appellant

Versus

State of Chhattisgarh, Police Station, GRP Raipur, District Raipur (CG)

---- Respondent

For Appellant : Shri BP Singh, counsel for the appellant.
For respondent : Shri Satish Gupta, Govt. Advocate.

Judgment On Board

24.11.2016

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.9.2014 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'the Act') in Special Criminal Case No.387/2014 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 12 kg contraband article Ganja, convicted him under Section 20(b)(ii)(B) of the Act and sentenced to undergo rigorous imprisonment for six years and to pay fine of Rs.24,000/-, in default of payment of fine, to further undergo RI for two years with direction that the period of custody during trial shall be set off under Section 428 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned, thereby committed illegality.

3. As per the case of the prosecution, on 24.3.2014, Station House Officer of GRP Raipur, Shankar Chandrakar (PW-9) received information from informant regarding carrying of illicit substance ganja by two people. He immediately called the panch witnesses. After notice (Ex-P/2) prepared information panchnama (Ex-P/3) and also prepared search without warrant panchnama (Ex-P/4) to conduct search without search warrant and sent a copy of the above document to his superior officials. Thereafter he reached to the spot, noticed the present appellant/accused standing, he gave him notice under Section 50 of the Act and informed his legal rights that he may be searched before any gazetted officer or Magistrate. The accused/appellant after notice, consented to be searched by the investigating officer himself. Thereafter bag of the accused/appellant was searched wherein objectionable substances were found. On physical examination the same was confirmed as Ganja. After taking weight of the said ganja it was found as 12 kg. The IO duly prepared sample packet and seized the remaining ganja and also seized one ticket. He arrested the accused/appellant, informed regarding the arrest of the accused and thereafter deposited the said ganja and samples for safe custody in malkhana. The samples were duly sent for chemical analysis to Forensic Science Laboratory, Raipur. The FSL confirmed the presence of Ganja in the samples.

4. Statement of the witnesses were recorded under Section 161 of the Code. After completion of investigation, charge sheet was filed before Special Judge under the Act, Raipur. The

accused/appellant has been charged for the offence under Section 20(b((ii)(B) of the Act.

5. In order to prove the guilt of the appellant, the prosecution has examined 9 witnesses in all. Statement of the accused was also recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, the learned trial Court convicted and sentenced the appellant as aforementioned.

7. Heard learned counsel for the parties and perused the impugned judgment.

8. Learned counsel for the appellant submits that he is not assailing the conviction of the accused/appellant for the offence. He is confining his argument only for the quantum of sentence awarded to the accused/appellant. The accused is the first offender, he is in jail since 23.4.2014, thereby he has completed 2 years and 8 months. No criminal history regarding any offence is collected or adduced during trial against the appellant. The accused is illiterate, resident of Kalahandi Orissa, unemployed, earning his livelihood anyhow. He was aged about 22 years at the time of the incident. Counsel for the appellant further submits that the appellant will not commit any offence in future, hence, sympathetic view may be taken regarding his jail sentence and fine sentence.

9. Per contra, learned counsel for the State/respondent opposed the arguments advanced on behalf of the appellant and would

submit that the accused/appellant is a resident of neighbouring state, for no sufficient cause he was standing at Raipur Railway Station along with 12 KG of ganja, which goes to show his involvement in illicit transportation of the said ganja, hence, the Court below convicted him for the offence which cannot be held as excessive or improper, hence, the instant appeal may be dismissed for all the counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during trial.

11. Learned counsel for the appellant is not contesting the appeal for the conviction part awarded to the appellant. Also from perusal of the evidence of IO Shankar Chandrakar (PW-9) and other evidence, oral and chemical analysis, it appears that the trial Court has not committed any error while convicting the accused/appellant for possessing 12 kg of illicit ganja. Consequently, in the considered view of this Court, conviction part of the accused/appellant requires no interference.

12. So far as quantum of both the sentences are concerned, the accused/appellant is the first offender, aged about 22 years at the time of the incident, and no criminal antecedent was reported during investigation. He is in jail for two years and eight months till date, he may be given opportunity for the purpose of reformation so that he may live in the society without further commission of any offence. In the considered view of this Court, as there was no minimum period

prescribed, the substantive jail sentence and the fine sentence be reduced for half.

13. Consequently, the appeal is allowed in part. Conviction of the accused/appellant under Section 20(b)(ii)(B) of the Act is hereby maintained. However, the substantive jail sentence awarded to the accused/appellant is reduced and he is sentenced to undergo for rigorous imprisonment for three years instead of RI for six years as awarded by the trial Court. Also fine sentence awarded to the appellant is reduced and he is awarded a fine sentence of Rs.12000/- instead of Rs.24,000/- awarded by the trial Court. The accused is also directed to serve the default sentence for a period of six months if he fails to deposit the fine sentence as directed by this Court. The accused is in jail for last 2 years and 8 months, he be released after serving RI for three years and after payment of fine sentence of Rs.12,000/-, if not required in any other case.

14. The appellant may file a copy of judgment before the concerned authorities for compliance. Registrar (Judl.) is also directed to send a copy of the order to the concerned trial Court through usual and fax mode for compliance.

15. Appeal allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE