

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1271 of 2014**

Pratap Kumar Tripathi, S/o. Dev Krishna Tripathi, aged about 32 years,
R/o. Village Purnapada, PS Bhawani Patna, Civil and Revenue District
Lalahandi (Odissa)

---- Appellant**Versus**

State of Chhattisgarh , through PS GRP, Raipur Civil and Revenue
District Raipur (CG)

---- Respondent

For Appellant	: Shri Krishna Kumar Dewangan, Advocate.
For respondent	: Smt. Shobha Kashyap, Dy. Govt. Advocate.

Judgment On Board**20.12.2016**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.11.2014 passed by the Special Judge under Narcotic Drugs Substance and Psychotropic Substances Act, 1985 (for short 'the Act'), Raipur in Special Criminal Case No.510/2014 whereby and whereunder the learned trial 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 him to undergo rigorous imprisonment for four years and to pay fine of Rs.36,000/-, in default of payment of fine, to further undergo RI for two years with a direction that period of custody during trial shall be adjusted with the substantive jail sentence under the provisions of 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 17.4.2014, Sub Inspector Premchand Raj (PW-7), Police Station GRP Raipur received information from informant that two suspects are coming from Vishakhapatnam in train carrying illegal substance ganja. The said information was duly recorded in the rojnamchasanha. He requisitioned the panch witnesses after serving them notice (Ex-P/1), thereafter prepared informant panchnama and search without warrant panchnama (Ex-P/2 & P/3), thereafter sent the above information to the superior officials thereafter he along with the panch witnesses reached to the spot, noticed the accused in suspicious circumstances, gave him notice under Section 50 of the Act informing him regarding his legal rights to be searched before any gazetted officer or Magistrate or if he wish, search may be conducted by the investigating officer himself. The accused/appellant gave consent to be searched by the IO himself. Thereafter the suspect was searched, he was carrying a backpack. In the said backpack he noticed some objectionable substance. On physical examination, the said substance was found as ganja. The weight of the said substance was taken, samples were taken and the said ganja was found out as 12 kg, he duly seized the remaining ganja and samples as per the

provisions, thereafter deposited the ganja and the samples with Malkhana of the Police Station, duly arrested the accused/appellant.

4. Statement of the witnesses were recorded under Section 161 of the Code. Thereafter the the samples were duly sent to the Forensic Science Laboratory for chemical analysis. Report of FSL confirmed the presence of ganja in the said samples, thereafter he informed his superior officials regarding seizure and other proceedings conducted by him. After completion of investigation, charge sheet has been filed before Special Judge under the Act, Raipur. The accused/appellant has been charged for the offence under Section 20b(ii)B of the Act.

5. In order to prove the guilt of the appellant, the prosecution has examined 8 witnesses. 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 providing opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the impugned judgment.

8. Learned counsel for the appellant submits that as instructed, he is not assailing the conviction part awarded by the

trial Court, he is confining his argument only on the quantum of substantive jail sentence only. He submits that the appellant is in jail for 2 years 8 months and 3 days till date. He is first offender, aged about 32 years, R/o. Kalahandi, Orissa. The appellant is MBA degree holder as per arrest memo (Ex-P/9), he will not commit any offence in future, he has learnt a lesson, let an opportunity be granted to him to remain in the society without committing any crime and to earn his livelihood by legal profession, hence, he may be sentenced looking to the entire facts and circumstances of the case.

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 degree holder of MBA and a mature person of 32 years, at the time of incident he was carrying 12 kg of contraband article ganja, which shows that he was involved in illicit transportation of ganja. Therefore, the trial Court rightly convicted sentenced him for the offence, hence, the appeal may be dismissed.

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 after perusal of the entire evidence adduced goes to show that the prosecution duly proved the offence against the appellant, hence,

conviction part requires no interference. So far as the fine sentence awarded by the trial Court is concerned, looking to the age, education qualification of the appellant, quantity of ganja seized from him, residential address of the appellant, on the fact that he was caught at Raipur GRP at Raipur Railway Station, I do not see any reason to interfere with the fine sentence awarded by the trial Court. Hence, the fine sentence awarded by the trial Court is also hereby affirmed.

12. So far as the quantum of substantive jail sentences are concerned, the accused/appellant is first offender, highly educated matured person and the police during investigation have not noticed any criminal antecedent against him which goes to show that he is first offender. Looking to the entire facts, in the considered view of this Court, he may be given an opportunity to live his rest of life as a law abiding citizen. In the considered view of this court, substantive jail sentence of RI for three years would serve the purpose.

13. Consequently, the appeal filed by the appellant is allowed in part. Conviction of the appellant under Section 20b(ii)B of the Act is hereby affirmed. Fine sentence awarded to the accused/appellant including the default part of the sentence is also hereby affirmed. However, the substantive jail sentence awarded to the accused/appellant is reduced and he is sentenced to undergo RI for three years instead of RI for four years as awarded by the trial Court along with set off period already served

from 17.4.2014 till date. The authorities are directed to serve him RI for three years and after completion of three years and also after deposit of fine sentence he be released forthwith, if not required in any other case. If the fine sentence is not deposited, the authorities concerned are directed to serve with default part of the sentence and release him only after serving the default sentence.

14. The appellant may file a copy of judgment before the concerned authorities for compliance.

15. Registrar (Judl) is also directed to send a copy of the judgment to the concerned trial Court through usual and fax mode for compliance.

16. Appeal allowed in part.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**