

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.255 of 2010**

- Bhaskar S/o. Timti Moulik, aged about 20 years. R/o. Village Basma, PS Odava, District Ganjam (Orissa)

---- Appellant**Versus**

- State of Chhattisgarh, Through Police Station Bagbahara, District Mahasamund (CG)

---- Respondent

For Appellant	: Smt. Usha Chandrakar, Advocate
For respondent/State	: Shri OP Sahu, Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****22.3.2017**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.10. 2009 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act of 1985), Mahasamund (CG) in Special Session Case No.03/09 whereby and whereunder the learned Special Judge after holding the appellant guilty for illicit possession of 10kg 500gm ganja, convicted him under Section 20b(ii)B of the Act 1985 and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.50,000/-, in default of payment of fine, to further undergo RI for two years with a direction that period of detention from 31.3.2009 till the date of judgment be set of.

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 31.3.2009, Inspector Vinod Tiwari (PW-3), Bagbahera received an information from informant that one person near Station Chowk is in illicit possession of ganja in a cartoon. The IO prepared informant panchnama and also prepared search panchnama and forwarded the copy to superior official and thereafter along with panch witnesses and police party reached to the Station Chowk. After recording rojnamchasanha, there he met the accused/appellant, , informed his identity and gave him notice that search to be made for the substance he is having. If he wish he may be searched before any gazetted officer, Magistrate or if he wish he may be searched by the IO himself. The accused/appellant consented to be searched by the IO. Thereafter the cartoon he was carrying was duly searched, noticed objectionable substance inside which was confirmed as ganja on physical examination. The said substance was weighed and found 10 kg and 500 gm. The said ganja was duly seized after taking samples and the same duly sealed and thereafter the remaining ganja and the samples were kept in the safe custody of malkhana . The samples were sent for chemical analysis for Forensic Science Laboratory, Raipur and the FSL vide its Report (Ex-P/27) presence of ganja was confirmed by the FSL, Raipur. Statement of the witnesses were recorded. FIR (Ex-P/5) was lodged and the superior officials were intimated regarding FIR, seizure and the other proceedings. After

completion of investigation, charge sheet has been filed before Special Judge under the Act Mahasamund for trial. The learned Special Judge framed the charges under Section 20b of the Act 1985.

4. In order to prove the guilt of the accused/appellant, the prosecution has examined 8 witness. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code') wherein he denied the charges framed against him, pleaded innocence and false implication in crime in question. The accused also examined one defence witness Jagat Ram Sahu (DW-1) and according to him, he had signed some papers at Police Station and he does not know anything specific against the accused/appellant .

5. After affording opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

6. I have heard learned counsel for the parties and perused the judgment and record the Court below.

7. Learned counsel for the appellant would submit that the trial Court erred in not considering the statement of Jagat Ram Sahu (DW-1) which goes to show that the police conducted proceedings inside the police station and also the statement of the witnesses are not trustworthy, hence, the accused may be given benefit of doubt as the prosecution failed to prove the offence beyond

reasonable and probably doubt. Inter alia, learned counsel for the appellant would submit that if at all offence is proved against the appellant, then the fact may be considered that he is the first offender, he is in jail since 31.3.2009 till date thereby served almost 8 years, there is no minimum sentence prescribed for the offence, he was earning his bread by doing labour job, he was aged about 20 years at the time of incident, though he was the resident of District Ganjam Orissa, during investigation the police could not find any commission of earlier offence of similar nature. Looking to the facts and circumstances, he may be sentenced for the period already undergone by him. It is also submitted that fine sentence of Rs.50,000/- awarded to him is excessive. Hence, it also requires consideration looking the entire facts and circumstances.

8. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the appellant and would submit that the accused/appellant is the resident of District Ganjam Orissa and he was found at Bagbahara along with 10 kg of gana goes to show that he is engaged in illegal transportation and sale of said ganja. With this, the trial Court rightly convicted and sentenced the appellant, hence appeal may be dismissed on all counts.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.

10. So far as the statement of Jagat Ram Sahu (DW-1) is concerned, the court has to view the entire material adduced by the parties. On perusal of the statement of Lalit Sahu (PW-6) who conducted the search, Vinod Tiwari (PW-3), Inspector who has lodged the FIR and also took part in the investigation, Bhajanlal (PW-4), Head Constable, Sikandar Sichiki (PW-7) panch witnesses and other witness, this Court is of the considered view that there is nothing in the record so as to make any doubt over the proceedings of the investigating agency. With this Statement of the prosecution witnesses are reliable and trustworthy and it cannot be brushed away with the statement of Jagat Ram Sahu (Dw-1). The Court below has not committed any error of law and facts to believe that the prosecution has prove its case against the appellant and convicted him for the cause. With this arguments advanced on behalf of the appellant that prosecution has not proved its case beyond reasonable doubt and probable doubt is not acceptable, hence, the conviction of the accused/appellant requires no any interference.

11. So far as quantum of substantive jail sentence and fine sentences are concerned, the accused is first offender, aged about 20 years, young boy though was was in possession of 10 kg ganja he is in jail for almost 8 years, he may be given opportunity to remain in the society without committing any crime of similar nature, also there is no minimum sentence prescribed for the offence. Hence, the period already undergone would serve the purpose. Also fine amount of Rs.50,000/- is on excessive side

looking to the entire facts and circumstances, hence, this court is of the considered view that awarding fine of Rs.10,000/- would be just and proper.

12. Consequently, the appeal is allowed in part. Judgment of conviction under Section 20b(ii)B of the Act, 1985 is hereby affirmed. However, instead of RI for 10 years, the accused/appellant is sentenced to undergo RI for the period already undergone by him. And also instead of fine sentence of Rs.50,000/-, the accused/appellant is sentenced to pay the fine of Rs.10,000/-, in default of payment of fine, to further undergo additional RI for six months. The accused/appellant is in jail, he be released forthwith if not required in any other case after depositing fine of Rs.10,000/- awarded by this Court. If the appellant fails to deposit the fine amount, he be served with default sentence as ordered by this Court.

13. The appeal allowed in part.

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