

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.623 of 1998

Shivendra Kumar, son of Yeg Narayan Patel, aged 17 years, resident of Village Devra, Police Station Shahpur, District Rewa, M.P.

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Shri N.K. Mehta, Advocate
For State/Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

8.12.2017

1. This appeal has been preferred against the judgment dated 26.2.1998 passed in Special Criminal Case No.167 of 1997 by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Raipur convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(i) read with Section 8 of the Act of 1985	Rigorous Imprisonment for 4 years and 6 months and fine of Rs.4,500/- with default stipulation

2. Case of the prosecution, in brief, is that on 1.5.1997 at about 4:00 a.m., during his patrolling duty near Village Parchampal, Head Constable Dindayal Singh (PW3) found the Appellant in suspicious condition. The Appellant was accompanied by one other person. The Appellant was in possession of a carton and a bag. On being asked, he admitted that he was having Ganja. He was taken to Police Chowki Bastar. Sub-Inspector O.S. Shukla (PW6), in presence of panch witnesses Anantram (PW1) and Negiram (PW2), gave a notice under Section 50 of the Act of 1985 (Ex.P3)

to the Appellant for his search to be made by the Sub-Inspector himself or by a Magistrate or by a Gazetted Officer. Vide Ex.P3 itself, the Appellant consented to be searched by the Sub-Inspector himself. On a search being made, Ganja was found in possession of the Appellant. On being weighed, total 18 Kgs. Ganja was found. 2 sample packets each of 30 Grams were prepared and sealed. Seizure of the recovered Ganja and its sample packets was made vide Ex.P1. The seized articles were deposited in Malkhana. Sample packets were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P13 which states that the samples sent for examination were found to be Ganja. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 20(b) of the Act of 1985. Charge was framed against him under Section 20(b)(i) read with Section 8 of the Act of 1985.

3. In support of its case, the prosecution examined as many as 6 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the mandatory provisions of the Act of 1985 have not been complied with. On the date of incident, the Appellant was a juvenile. It was also submitted that the sentence awarded to the Appellant be reduced to the period already undergone by him.

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Head Constable Dindayal Singh (PW3) has stated that on 1.5.1997, during his patrolling duty at Village Parchampal, the Appellant was found in suspicious condition. He was having a carton and a bag. On being asked, he answered that he was having Ganja. He was taken to police station along with the articles in his possession. Further proceedings were done by O.S. Shukla (PW6). O.S. Shukla (PW6) has stated that he gave a notice (Ex.P3) to the Appellant regarding his search and consent of the Appellant was obtained on Ex.P3 itself. The Appellant consented to be searched by O.S. Shukla himself. On being searched, Ganja was recovered from the carton. Identification of the recovered article was done vide Ex.P4 in which the article recovered was found to be Ganja. On being weighed (Ex.P2), it was found to be 18 Kgs. 2 sample packets each of 30 Grams were prepared and sealed. The recovered Ganja and its sample packets were seized vide Ex.P1. The sample packets and the remaining quantity of seized Ganja were deposited in Malkhana. First Information Report (Ex.P10) was registered. The sample packets were sent to the FSL vide Ex.P8. FSL Report is Ex.P13 which states that the samples sent for examination were found to be Ganja.
9. Panch witnesses Anantram (PW1) and Negiram (PW2) have supported the case of the prosecution and stated that Ganja was seized and weighed in their presence in the police chowki. Head Constable Mahreg Uraon (PW4), who was Malkhana Moharrir, has

stated that on 3.5.1997, he had received Ganja in sealed condition. He had made entry thereof in Malkhana Register (Ex.P7). Constable Dhananjay (PW5) had taken the seized sample packets of Ganja to the FSL for examination vide a memo (Ex.P8) and obtained an acknowledgment thereof from the FSL vide Ex.P9.

10. On minute scrutiny of the evidence on record, it is found that the mandatory provisions of the Act of 1985 have been complied with in this case, therefore, the offence alleged against the Appellant is proved.
11. Now, I shall examine the case of the Appellant who has claimed that at the time of incident, he was a juvenile.
12. Question of the Appellant being a juvenile was neither raised before the Committal Court nor before the Trial Court. It has been raised for the first time at this appellate stage. The Appellant has claimed that he was aged below 18 years on the date of incident, i.e. 1.5.1997. In the certificate of the High School Examination, the date of birth of the Appellant is mentioned as 1.6.1979. This Court after hearing both the parties on I.A. No.1, by order dated 30.4.2013, had directed the Special Judge under the Act of 1985, Raipur to hold an inquiry and record a finding relating to the age of the Appellant on the date of incident, i.e., 1.5.1997 in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (henceforth 'the Act of 2000') to determine his age on the date of incident. The Learned Special Judge has conducted an inquiry and submitted a report dated 9.3.2016 stating that the date of birth of the Appellant is 1.6.1979 and on the date of incident he was aged about 17 years and 11 months. Thus, the Appellant was a juvenile on the date of incident. The State has not

opposed the said inquiry report.

13. In view of the above unassailed finding of the Special Judge, the age of the Appellant on the date of incident was 17 years and 11 months. The parties have accepted the correctness of the age determined by the Special Judge. Thus, it is established that the Appellant was a juvenile on the date of incident. Therefore, his matter is to be dealt with taking into consideration his juvenility.
14. In the judgment dated 30.10.2012 delivered in Criminal Appeal No.805 of 1995 [Mohan alias Brij Mohan and another v. The State of Madhya Pradesh (now State of Chhattisgarh)] by a Division Bench of this Court, it was observed thus:

“15. The Juvenile Justice Act, 1986 was subsequently repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. On 22.8.2006 Section 2(l) of the 2000 Act was amended stating that 'juvenile in conflict with law' means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. The Juvenile Justice (Care and Protection of Children) Rules, 2007 were brought into force on 26.10.2007. As per Rule 97(2) all the cases pending which have not received a finality has to be dealt with and disposed of in terms of the provisions of the 2000 Act as amended on 22.8.2006 and the 2007 Rules. According to the above Rules, therefore, Hari Shankar (A-2) would be entitled to benefit under the provisions of the 2000 Act. In such situation, appellant No.2 (A-2) ought to have been tried by the Competent Board, and not by a Regular Court, in terms of Section 14 of the Act, 2000.

16. Section 15 of the Act provides about the order that may be passed regarding a juvenile. U/s 15(1)(g), it has been provided that the Board may make an order directing the juvenile to be sent to a special home for a period of three years. Under the proviso, the board has power, for the reasons to be recorded, to reduce the period of stay to such period as it thinks fit.

17. Section 16(1) of the Act 2000 provides that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to

imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security. According to the proviso, where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. Sub-section (2) of Section 16 further provides that on receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit. Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act.

18. Section 19 of the Act 2000 provides for removal of disqualification attaching to conviction. It provides that notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

19. Therefore, it is clear that in no case a juvenile on holding him guilty for an offence can be sent for more than the period prescribed u/s 15 of the Act and the case of Hari Shankar (A-2) has to be dealt with in the above manner.”

15. In view of the foregoing, in the instant case, the conviction imposed upon the Appellant by the Trial Court is affirmed.
16. In this case, the Trial Court has sentenced the Appellant with rigorous imprisonment for 4 years and 6 months and fine of Rs.4,500/-. The Appellant has already undergone about 13 months. At the time of occurrence, he was a minor. He is facing the *lis* since 1997.
17. Having regard to the facts and circumstances of the case, I am of the considered opinion that sentencing the Appellant with the

period already undergone by him and enhancing the amount of fine to Rs.40,000/- would serve the interest of justice. Ordered accordingly. The amount of fine enhanced today shall be payable within 4 months from the date of receipt of a copy of this judgment. In default of payment, the Appellant shall be liable to undergo rigorous imprisonment for 6 months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine enhanced today.

18. Consequently, the appeal is allowed in part to the extent indicated above.
19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge