

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.38 of 2002

Balram Kumar, S/o Chintaram Sahu, aged about 32 years, R/o Near Durga Chowk, Rajnandgaon, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Narayanpur, District Jagdalpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Vaibhav Goverdhan, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

21.11.2017

1. This appeal has been preferred against the judgment dated 1.9.2001 passed in Special Case No.6 of 2001 by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Bastar at Jagdalpur convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(i) of the Act of 1985	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.3,000/- with default stipulation

2. Brief facts of the case are that on 26.1.2001 at about 3:00 p.m., Assistant Sub-Inspector Chheduram Sevta (PW4) received a information that two persons have kept Ganja with them and are sitting in Kanker Roadways Bus which was to go to Rajnandgaon. He prepared a panchnama thereof vide Ex.P1. He forwarded the information to the superior officer and prepared a panchnama thereof vide Ex.P2. He along with police force and independent

witnesses went to the spot, i.e., at Bus Stand Narayanpur. He found that on the fifth seat of the bus, the Appellant was sitting. A notice (Ex.P3) under Section 50 of the Act of 1985 was served on him. Vide Ex.P5, he consented to be searched by Assistant Sub-Inspector Chheduram Sevta (PW4) himself. Chheduram Sevta and other accompanied staff and independent witnesses gave their search vide Ex.P4. The Appellant was having a plastic bag with him. In search of the said plastic bag, about 2.500 Kgs. Ganja was found therein. Search panchnama (Ex.P6) was prepared. Identification panchnama of the Ganja recovered from the Appellant was prepared vide Ex.P8. Weight panchnama (Ex.P9) was prepared in which the recovered Ganja was weighed and found to be 2.500 Kgs. Two sample packets each of 30 Grams of the recovered Ganja were prepared, sealed and the remaining quantity of the Ganja was also sealed on the spot. A panchnama (Ex.P10) thereof was prepared. A panchnama (Ex.P11) of specimen of the seal was also prepared. Seizure of the recovered Ganja and two sample packets was prepared vide Ex.P7. Spot map (Ex.P14) was also prepared. Assistant Sub-Inspector Chheduram Sevta (PW4) along with the search team, independent witnesses and the seized articles came back to the police station. First Information Report (Ex.P16) was registered. Seized articles were deposited in the Malkhana. Details of the complete proceedings drawn were forwarded to the superior officer vide Ex.P17. The seized sample packets of the Ganja were sent to the Forensic Science Laboratory for chemical examination vide Ex.P19. FSL Report is Ex.P21 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) of the Act of 1985.

3. To hold the Appellant guilty, the prosecution examined as many as 4 witnesses. Statement of the Appellant was also recoded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. No defence witness has been examined on his behalf.
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 none of the independent witnesses have supported the prosecution case. All the mandatory provisions of the Act of 1985 have not been complied with. Vide Ex.P14, consent was not given by the Appellant and the same does not contain the date and time of its recording. It was not signed by the witnesses. No acknowledgment against the deposit of articles was obtained from the Malkhana Moharrir. He further submitted that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submitted that out of the total jail sentence of 1 year and 6 months, the Appellant has already undergone about 14 months. He has no criminal antecedent. He is facing the *lis* since 2001. Therefore, his sentence may be reduced to the period already undergone by him.
6. On the contrary, Learned State Counsel opposed the prayer made by Learned Counsel for the Appellant and supported the impugned judgment.

7. Considering the above facts and circumstances of the case, I am of the opinion that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentence awarded to him is reduced to the period already undergone by him and the sentence of fine is affirmed. Ordered accordingly.
8. Consequently, the appeal is allowed in part to the extent indicated above.
9. 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