

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 272 of 2017**

1. Dhaniram Sahu S/o Shri Rambharos Sahu Aged About 62 Years R/o Azad Chowk Arjuni, Thana- Bhatapara (Rural) Civil & Revenue District- Balodabajar- Bhatapara, Chhattisgarh.
2. Krishna Kumar S/o Shri Dhaniram Sahu Aged About 29 Years R/o Azad Chowk Arjuni, Thana- Bhatapara (Rural) Civil & Revenue District- Balodabajar- Bhatapara, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through The District Magistrate, Balodabajar, District Balodabajar- Bhatapara, Chhattisgarh.

---- Respondent

For Applicants : Shri Sunil Sahu, Advocate.
For Respondent/State : Shri Sangharsh Pandey, Deputy GA.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****09/03/2017**

1. The applicants have assailed the legality and validity of the order dated 4.2.2017 passed by the Special Judge, NDPS and First ASJ, Baloda Bazar in Special Criminal Case No.5/2016 framing charges against the applicants for offence under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985

(henceforth 'the Act').

2. The prosecution case is that on 3.11.2016 the concerned Police received information that Ganja is being transported through Hero Honda-Pro Motorcycle from Pithora to Kasdol. The Police intercepted the vehicle and recovered 10 Kg Ganja from co-accused Bablu Sahu, who on interrogation informed the Police that he was taking Ganja for applicant Dhaniram Sahu. The police thereafter prepared a demo of 4 Kg Ganja on 4.11.2016 and took the said Bablu Sahu to the house of applicant Dhaniram Sahu. On reaching the house of Dhaniram Sahu, Bablu informed him that he has brought Ganja on which Dhaniram Sahu instructed Bablu to handover the same to Krishna Kumar and received Rs.15,000/- from Dhaniram Sahu. The Police thus recovered a bag containing 4 Kg Ganja from applicant No.2 Krishna Kumar and Rs.15,000/- from applicant No.1 Dhaniram Sahu and arrested them for the said offence.
3. It is argued that the bag from which 4 Kg Ganja said to have been recovered from applicant No.2 was in fact a demo bag containing some other material than Ganja because 10 Kg Ganja earlier recovered from Bablu remained in the Police Station. Therefore, there is no recovery of contraband from applicant No.2 and mere

recovery of Rs.15,000/- from applicant No.1 would not amount to commission of offence under the said section.

4. Per contra, learned State Counsel would support the charges framed against the applicants.
5. It appears, the applicants and main accused Bablu from whom Ganja was recovered initially were acting in tandem and in course of that illicit agreement Bablu was bringing contraband for supplying or selling to applicant No.1 Dhaniram Sahu, however, he was caught on his way, therefore, the act of supplying contraband to Dhaniram Sahu was lawfully prevented by the police. At the time when Bablu was taken to the house of Dhaniram Sahu and he offered to supply 4 Kg Ganja, Dhaniram Sahu was under impression that the bag contains Ganja and in that belief, he asked his son, applicant No.2, Krishna Kumar to keep demo bag containing Ganja and was prepared to handover Rs.15,000/- to Bablu and at that very point in time, the amount was seized from applicant No.1 whereas demo bag containing 4 Kg Ganja (presumably) was recovered from applicant No.2.
6. At this stage sections 29 and 30 of the Act needs reference which are reproduced hereunder:-

“29. Punishment for abetment and criminal

conspiracy. - (1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which -

(a) would constitute an offence if committed within India ; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

30. Preparation.- If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of section 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of

imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:

Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine.”

7. Section 29 of the Act provides for punishment for abetment and criminal conspiracy whereas section 30 deals with preparation to commit certain offences under the Act, as offence by itself. Therefore, if the charge under the substantive offence has been framed against the applicants which they wanted to commit but was not completed because of arrest of the main accused who was likely to supply Ganja to Applicant No.1, it cannot be said that the applicants have not committed any offence. It is for the trial Court to examine the provisions contained in Sections 29 and 30 of the Act in course of trial and consider as to whether the applicants would be guilty of committing substantive offence with the aid of Sections 29 & 30 of the Act and may impose sentence accordingly.
8. It is settled law that if a person is tried to committing substantive offence but it is subsequently found that he was only planning to

commit that offence, he can be convicted for preparation to commit that offence on the principle under Section 511 of the IPC.

9. For the foregoing, this Court does not find any substance in this Criminal Revision, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

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