

COURT OF CHHATTISGARH, BILASPUR

S.B. : Hon'ble Shri Justice Chandra Bhushan Bajpai

Criminal Appeal No.442 of 2017

Appellants

1. Rajesh Kumar Panika S/o Girija Shankar Panika, Aged About 21 Years R/o Village Samlai, Police Station Pasan, District Korba Chhattigarh

2. Sandeep Kumar Shyam, S/o Gambhir Singh Shyam, Aged About 21 Years R/o Village Samlai, (Wrongly Mentioned As Saam Bai) Police Station Pasan District Korba Chhattisgarh

Versus

Respondent

State Of Chhattisgarh Through Police Station Pendra, District Bilaspur Chhattisgarh

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973

Appearance:

Shri Lalit Jangde, Advocate for the appellants.
Shri Vivek Singhal, Panel Lawyer for the State.

JUDGMENT

(23-3-2017)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 9.3.2017 passed by Special Judge, Bilaspur (CG) competent to try the case under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) in Special Criminal Case No.212/15 whereby and whereunder the trial Judge after holding the appellant guilty for illicit possession of 5 kg of ganja, convicted both the

appellants under Section 20(b)(ii) (B) of the NDPS Act and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.5000/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 month to each of the appellants with a direction that the period of detention from 1.6.2015 till the date of judgment for 1 year 9 months and 8 days be set off under Section 428 Cr.P.C.

2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforesaid mentioned and thereby committed illegality.

3. As per case of the prosecution, on 1.6.2015, A.S.I. PW6, Hemant Singh Thakur, Investigating Officer received an information from the informant that 2 persons coming from village Pasan carrying ganja. The Investigating Officer called the Panch witnesses also prepared the informant Panchnama and prepared the memo. Searched without obtaining search warrant and thereafter along with police party and panch witnesses reached to the spot near Petrol Pump Sakola, saw the appellants coming on motorcycle. He stopped the accused persons; gave them his identity and informed the information received from informant and served them notice under Section 50 of the NDPS Act that if they wish so they may be searched before the gazetted officer or the executive Magistrate or may be searched by the Investigating Officer himself. The accused persons consented to be searched before the Investigating Officer. Thereafter, he searched the belongings of

accused/appellants and recovered some suspected substance which on physical verification confirmed as ganja. Thereafter, he had taken the weight of said ganja which was 5 kg. He has taken the sample of 100 -100 gm and duly seized and sealed the sample and the remaining ganja. Also seized the said motorcycle and both the accused/appellants were arrested and their near relatives were informed separately. The unnumbered FIR was registered at the spot. Thereafter, FIR was registered. The seized property was kept in the safe deposit at Malkhana and seizure and complete proceedings were intimated to the senior officials and the concerned Magistrate. The sample of ganja was sent for chemical analysis and as per report of the FSL presence of ganja was confirmed. The statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

4. After completion of the investigation charge sheet was filed before the trial Judge under the NDPS Act who framed charges under Section 20(b)(ii) (B) of the NDPS Act.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 7 witnesses. The accused/appellants were examined under Section 313 of the Code where they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.

6. The learned trial Judge after providing opportunity of hearing to

the parties, convicted and sentenced the appellants as aforementioned.

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

8. Learned counsel for the appellants submits that as directed he is not contesting the judgment of conviction whereby the appellants have been held guilty under Section 20(b)(ii)(B) of the NDPS Act, he is praying that the accused/appellants are aged about 21 years and they were first offender. They are in jail since 1 year, 9 months and 8 days, with this, they have completed almost the sentence awarded. They will not commit any similar offence in future, therefore, the sentence may be reduced to the period already undergone as there is no minimum sentence prescribed for the offence.

9. On the other hand, learned counsel for the State opposes the arguments advanced by the learned counsel for the appellants and supported the judgment of conviction and sentence passed by the court below.

10. Perused the judgment dated 9.3.2017.

11. The accused/appellants are in jail since 1.6.2015. The substantive jail sentence awarded is only for 2 years. The accused/appellants have almost completed the sentence awarded. They are the first offenders aged about 21 years and the ganja so seized from their joint conscious possession is 5 kg. On due consideration of the facts and circumstances,

in the considered view of this Court, the period already undergone by the appellants would serve the ends of justice.

12. Consequently, the appeal is partly allowed. Conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act is hereby affirmed. The fine sentence awarded to both the appellants is hereby affirmed. So far as the substantive jail sentence awarded to the appellants is concerned, instead R.I. for 2 years to each of the appellants, the period already undergone is awarded. They are in jail. They be released forthwith if not required in any other case after payment of fine amount awarded to them. If fine amount is not paid, the authorities concerned are directed to serve the appellants the default sentence as per para 22 of the judgment of trial court.

13. The appellants may file copy of this order before the court below for compliance.

14. Registrar (Judicial) is directed to send the copy of the judgment to the court below for compliance.

15. Certified copy as per rules. Sd/

(Chandra Bhushan Bajpai)
JUDGE

