

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 728 of 2015

Judgment reserved on : 20.01.2017

Judgment passed on : 15.02.2017

- Manoj Kumar Dhurwa, s/o Butu Dhurwa, aged about 30 years, R/o Village - Gondipal, Post Office, Police Station & District - Malkhangiri (Odisha) **---- Appellant**

Versus

- State of Chhattisgarh through the District Magistrate, District-Dhamtari (CG) **---- Respondent**

For Appellant	:	Shri Shivendu Pandya, Advocate
For Respondent/State	:	Shri Neeraj Sharma, Dy GA

Hon'ble Shri Justice Anil Kumar Shukla
CAV Judgment

1) The appellant has preferred the present appeal against the judgment of conviction and order of sentence dated 22.05.2015 passed by the learned Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act, 1985'), Dhamtari (CG) in NDPS Case No. 01 of 2014, whereby the appellant has been convicted for the offence punishable under Section 20(b)(ii)(B) of the Act, 1985, sentenced to undergo Rigorous Imprisonment for 4 years and to pay fine of Rs.40,000/-, in default of payment of fine, additional RI for one year.

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 and thereby committed illegality.

3) Prosecution story, in brief is that on 16.09.2014 at about 10.40 pm, In-Charge Police Inspector RK Sori (PW-9), who was then posted at City Kotwali, Dhamtari received a secret telephonic information that two

persons were standing near Ambedkar Chowk with green and maroon colour bags of contraband Ganja for sale. On receiving this information, he prepared Rojnamcha (Ex.P/22C) and gave notice vide Ex.P/3 to independent witnesses Sunil Sahu and Sandesh Gupta (PW-2). The said information had also been sent to the Deputy Superintendent of Police, Dhamtari. Thereafter, RK Sori (PW-9) along with Police Staff and the independent witnesses, reached Ambedkar Chowk. As per the information, there were two persons one being the present appellant, who were standing with two bags of Ganja and on enquiry, they told their names and also told that they brought Ganja for sale. They gave consent for inquest vide Ex.P/5 and physical verification of Police staff was made vide Ex.P/2. On search in presence of the independent witnesses the Police found 7.485 kg Ganja in four polythene bags from the possession of the appellant vide Ex.P/11. Ganja was duly tested, weighed and various memos were prepared. Finally, FIR was lodged vide Ex.P/26 by RK Sori (PW-9). Samples were taken from the seized Ganja and after sealing the entire Ganja and samples, the articles were handed over to the Police concerned to keep the same in Malkhana vide Ex.P/19C. Thereafter, the samples were sent to Forensic Science Laboratory, Raipur on 18.09.2014 and the report of FSL Raipur is Ex.P/32 in which the seized substance was found to be Ganja.

4) Statements of the witnesses were recorded under Section 161 of the Cr.P.C and after completion of investigation, charge-sheet was filed before the Special Judge, NDPS Act, Dhamtari.

5) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as ten witnesses. No defence witness has been examined. The appellant was examined under Section

313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed his innocence and false implication in the crime in question.

6) After providing opportunity of hearing to the parties, learned Special Judge, Dhamtari has convicted and sentenced the appellant as aforementioned.

7) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8) Learned counsel submits that he confines his argument to the sentence part only and does not challenge the conviction imposed upon the appellant. Accosting the sentence part awarded to the appellant, learned counsel submits that the appellant is a young youth of 32 years from a poor economic background and this is his first offence. Out of the jail sentence of four years awarded to him, he remained in the custody for 248 days during the trial and at present he is in custody. He remained in the custody for nearly two and half years in this case. Therefore, jail sentence of the appellant may be reduced to the period already undergone by him. The appellant is a poor person who cannot deposit a huge fine directed by the trial court and therefore, it is also prayed that fine imposed upon the appellant may be reduced.

9) On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellant.

10) From the record, it is revealed that the incident is of 16.09.2014, seizure of 7.485 kg Ganja was made from the appellant and he was not holding a valid licence to keep that much Ganja. No evidence has been led by the prosecution regarding past criminal antecedents of the

appellant under the Act. More than 2 years have already passed since the date of incident and the appellant has already suffered jail sentence for nearly two and half years.

11) In light of above discussion, I am of the considered opinion that interest of justice would be served if, while upholding the conviction imposed upon the appellant, he is sentenced with the imprisonment already suffered by him. Similarly, fine imposed upon the appellant appears to be excessive and therefore, it may also be reduced.

12) Accordingly, the appeal filed by the appellant is hereby allowed in part. The conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act is hereby maintained. However, the sentence of the appellant is reduced to the period already undergone by him. Fine amount is also reduced from Rs. 40,000/- to Rs. 15,000/-. He shall undergo six months rigorous imprisonment if fine amount is not deposited.

13) It is stated that the appellant is in jail. He be set at liberty at once, if not required in any other case.

14) A copy of this judgment be sent to the trial Court along with its record for information and compliance forthwith.

Sd/-
(Anil Kumar Shukla)
JUDGE