

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1409 of 2015

Judgment reserved on : 17.01.2017

Judgment passed on : 27.01.2017

- Harilal Yadav @ Hari S/o Vrindalal Yadav, aged about 36 years, R/o DMC Talabpar WArD No.18, Kumhari, PS Kumhari, District-Durg (CG) **---- Appellant**

Versus

- State of Chhattisgarh through PS Kumhari, District Durg (CG) **---- Respondent**

For Appellant	:	Shri Vineet Kumar Pandey, 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 06.06.2015 passed by the learned Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act, 1985'), Durg (CG) in NDPS Case No.24 of 2012, whereby the appellant has been convicted for the offence punishable under Section 20(b)(ii)(B) of the Act, 1985 and sentenced to undergo Rigorous Imprisonment for 7 years and to pay fine of Rs.1,000/-, in default of payment of fine, additional RI for one month.
- 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 17.12.2012, JP Kathoute (PW-6), Assistant Sub-Inspector, PS Kumhari received a secret information by an informant that contraband Ganja was kept illegally by

the accused/appellant inside his house. On receiving this information, JP Kathoute prepared Rojnamcha No.12 and gave notices to independent witnesses Pawan (PW-4) and Lucky (PW-5). The said information had also been sent to the CSP Office Durg. Thereafter, he along with Vinod Mishra, Constable, reached the house of the accused/appellant. Accused/appellant Harilal Yadav @ Hari gave his consent for inquest vide Ex.P/10. Physical verification of Police Officer and staff was made vide Ex.P/11. Thereafter, at 16.10 hours, they made a search in the house of the accused/appellant in presence of the independent witnesses and found 13 kg 700 gms Ganja in two different bags and the same was seized vide Ex.P/13. Ganja was duly tested, weighed and various memos were prepared. Finally, FIR was registered vide Ex.P/34 by JP Kathoute and the accused/appellant was arrested. Samples were taken from the seized Ganja and after sealing the entire Ganja and samples, the articles were handed over to the Head Constable Punaaram Sahu to keep the same in Malkhana. Thereafter, the samples were sent to Forensic Science Laboratory, Raipur on 18.12.2012 and the receipt of FSL Raipur is Ex.P/3. Report of FSL Raipur is Ex.P/37 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, Durg.

5) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eight 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, Durg 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 on the date of the incident, the appellant was aged about 36 years. The quantity of Ganja seized from him was 13 kg 700 gms. Out of the jail sentence of seven years awarded to him, he has already undergone above four years. Therefore, considering all the facts and circumstances of the case, learned counsel prays to reduce the sentence of the appellant imposed upon him to the period already undergone by him.

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 17.12.2012. Seizure of 13 kg 700 gms 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. Above 4 years have already passed since the date of incident and the appellant has already suffered jail sentence for above four 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.

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 imposed against him shall remain as it is meaning thereby, he shall pay fine amount of Rs.1,000/-, in default of payment of fine, to undergo one month RI.

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

Sd/-
(Anil Kumar Shukla)
JUDGE