

COURT OF CHHATTISGARH, BILASPUR

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

Criminal Appeal No.1256 of 2016

Appellants

Dharmendra Kumar S/o Ramsurat
Mahar Aged About 31 Years R/o
Station Madaoda, B.R.P. Colony,
Bhilai, Police Station Newai, District
Durg, Chhattisgarh.

Versus

Respondent

State Of Chhattisgarh Through
Aarakshi Kendra- Darbha, Branch
Jagdalpur, District Bastar,
Chhattisgarh.

Criminal Appeal No.1513 of 2016

Appellants

Sanat Korram S/o Firangi Korram
Aged About 27 Years R/o Kriyakanta,
Chowki Golavand, Thana Kondagaon,
District Kondagaon, Chhattisgarh.

Versus

Respondent

State Of Chhattisgarh Through Police
Station Darbha, Branch Jagdalpur,
District Bastar, Chhattisgarh.

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

Appearance:

Shri Arvind Dubey Advocate for the appellant in Cr. Appeal No.
1256/2016.
Shri Deepak Jain, Advocate for the appellant in Cr. Appeal No.
1513/2016
Shri O.P. Sahu, Govt. Advocate for the State in both the Cr.
Appeals.

JUDGMENT

(24-3-2017)

1. By this common judgment Cr. Appeal No. 1256/2016 and 1513/2016 are being disposed of together as both the appeals arise out of the common judgment passed in Special Case No.11/2014 on 19.9.2016 by the Special Judge (Narcotic Drugs and Psychotropic Substances Act, 1985) (for short, the NDPS Act), Bastar at Jagdalpur.
2. Challenge in these appeals is to the judgment of conviction and order of sentence dated 19.9.2016 passed by the Special Judge (NDPS Act), Bastar at Jagdalpur in Special Case No.11/2014 whereby and whereunder the appellants have been convicted under Section 20(b)(ii) (B) of the NDPS Act, appellant- Sanat Korram for illicit possession of 5 kg ganja and appellant Dharmendra Kumar for 2.5 kg of ganja and sentenced to undergo rigorous imprisonment for 5 years and to pay fine of Rs.10,000/- to each of the appellant, in default of payment of fine, to further undergo rigorous imprisonment for 3 months to each of the appellants with a direction that the period of detention be set off under Section 428 Cr.P.C.
3. As per facts surfaced, appellant, Sanat Korram is in custody since 21.10.2014 till date i.e. for 2 years, 5 months and 3 days and appellant - Dharmendra Kumar is in custody since 21.10.2014 till 7th October, 2016, the date of order of suspension of his sentence and thereafter it took more days to furnish the bail bonds with this he remained in custody for

about 2 years. Appellant Dharmendra Kumar has deposited the fine amount as the substantive jail sentence only was suspended.

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

5. As per case of the prosecution on 20.10.2014, SHO Darbha, PW10, Durgesh Sharma received information from the informant that 2 suspects near the Kamanar Barrier having ganja with them in a bag waiting for some person for the illegal sale. Thereafter, the concerned Investigating Officer requisitioned 2 panch witnesses and along with police party reached to the place. Also informed the superior officials for the information and for further proceedings. At the spot he met both the appellants and thereafter, both the appellants on receipt of notice under Section 50 of the NDPS Act consented to be searched by the PW10 itself. Thereafter, the Investigating Officer and police party with the witnesses conducted search. When both the accused/ appellants searched they were keeping bag in their conscious possession. In the said bag, there was some suspected substance which was confirmed as ganja. On physical verification after taking weight, appellant Sanat Korram was found in possession of 5 kg ganja and appellant - Dharmendra Kumar for 2.5 kg of ganja. The Investigating Officer duly taken the sample and kept the ganja in the custody of Malkhana of Police Station. The sample of ganja was sent for chemical analysis and

as per report Ex. P34 of the FSL, Raipur presence of ganja was confirmed. Spot map was prepared. The statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

6. 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.

7. In order to prove the guilt of the appellants, the prosecution examined as many as 10 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.

8. The learned trial Judge after providing opportunity of hearing to the parties, convicted and sentenced the appellants as aforementioned.

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

10. Learned counsel for the appellants submits that appellant Sanat Korram is in jail since 2 years, 5 months and 3 days till date. Appellant - Dharmendra Kumar remained in jail for about 2 years prior to his suspension of sentence and grant of bail; they will not commit any offence in future, therefore, they may be given an opportunity to remain in the society without committing any offence and they may be

sentenced for the period already undergone.

11. On the other hand, learned counsel for the State opposes the arguments advanced by the learned counsel for the appellants and would submit that appellant Dharmendra Kumar is resident of District Durg and appellant Sanat Korram is resident of Kondagaon (CG) and they were caught along with illicit substance ganja in the territorial jurisdiction of police station Darbha, District Bastar at Jagdalpur goes to show that they are engaged in illegal transportation or sale of the illicit ganja. Hence, the trial court adequately sentenced the appellants, therefore, the appeal filed by both the appellants may be dismissed.

12. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced on behalf of the prosecution.

13. Both the appellants are not assailing the appeal on its merits. Also after perusal of the entire evidence adduced by the prosecution, I do not see any reason to interfere with the conviction of the appellants. With this conviction of both the appellants requires no interference. Also the fine sentence awarded cannot be held as excessive. With this fine sentence awarded is also requires no interference and same is to be affirmed. So far as substantive jail sentence of both the appellants is concerned, appellant Dharmendra Kumar was in possession of 2.5 kg ganja. He remained in jail for 2 years and also as stated deposits the fine amount before the trial Court. Appellant Sanat Korram is in jail since 2 years 5

months and 3 days till date. Looking to the fact that they are the first offender and other criminal antecedent is not noticed by the Investigating Officer during investigation, in the considered view of this Court, the period already undergone by the appellants would serve the ends of justice.

14. Consequently, the appeals filed by the appellants are 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 5 years to each of the appellants, the period already undergone is awarded.

15. Appellant Dharmendra Kumar is on bail. He be set free if deposited the fine amount before the trial court earlier, if not deposited then the authorities are directed to serve the appellant Dharmendra Kumar for the default part of the sentence as in para 30 of the judgment of the trial court.

16. Appellant Sanat Korram is in jail he be set at liberty forthwith if not required in any other case after depositing the fine amount awarded Rs.10,000/-. If he not deposits the fine amount, he shall serve with the default part as per para 30 of the order of the trial court.

17. The appeals are allowed in part.

18. The appellants may file copy of this order before the court below

for compliance.

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

Sd/-

(Chandra Bhushan Bajpai)

JUDGE

