

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Cr.A No. 508 of 2003**

Vipur Das S/o Buloo Ram, aged about 20 years, Occupation Labour R/o
M.V. 70, P.S. Kalimela, District Malkangiri, Orissa.

----Appellant**Versus**

State of Chhattisgarh, Through P. N. Nagarar District Bastar, Chhattisgarh.

---- Respondent

For petitioner	:	None
For respondent-State	:	Shri Sangharsh Pandey, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24.03.2018.**

1. The present appeal is assailing the judgment of conviction dated 28.01.2003 passed by the learned Special Judge, N.D.P.S., Jagdalpur in Special Trial No. 40 of 2002.
2. Vide the impugned award the trial Court is convicted the appellant for the offence under Section 20(B)(ii)(b) of N.D.P.S Act and sentenced him to undergo R.I. for 3 years and 6 months along with penalty of Rs.10,000/- with default stipulation.
3. The case against the present appellant is that he was found in possession of a bag on 21.09.2002 carrying 5 K.G. 500 grams Gaanja. The police on receipt of secret information conducted a raid and in the raid the present appellant was found to be in possession of the contraband and thereafter the formalities as is required under the provision of N.D.P.S. Act was undertaken and case was registered against the appellant for offence under Section 20(B)(ii)(b) of the N.D.P.S. Act.
4. During the course of trial, the prosecution examined as many as 5

witnesses . There was no witness examined on behalf of the defence and subsequently the trial Court vide the impugned judgment dated 28.01.2003 convicted the appellant and sentenced him for the offence under Section 20(B)(ii)(b) of the N.D.P.S. Act.

5. Since there was no representation on behalf of the appellant and considering the fact that the appeal is of the year 2003, this Court thought it proper for deciding the appeal taking assistance from the Government Counsel.
6. The ground raised in the memo of appeal challenging the impugned judgment is that, the prosecution has failed to establish the case in accordance with Sections 40 and 50 of N.D.P.S. Act and therefore the entire prosecution's case gets collapsed. It was also the contention in the pleading of the appellant that the case of the prosecution has not been supported by any independent witness and therefore also the impugned judgment of conviction deserve to be set aside. It was lastly contended that the applicant in the instant case was too young a person for being prosecuted offence under Section 50-2-B and it appears that he has been falsely implicated in the said case.
7. Given the aforesaid facts it would be proper if we proceed with the evidence which come on record. PW-1 is Shri Alim Khan, Sub Inspector of Police who was the investigating officer. From his deposition it clearly reflect that they had received secret information at Nagar Naar Police Station in respect of a young boy carrying contraband at a particular place. On receipt of the said information the same was recorded in the Rojnamcha and intimation in this regard to the superior officer was immediately sent i.e. a report to the

higher authority was made to Additional S.P., Jagdalpur where the intimation was received by the reader in the office of Additional S.P. and the receipt received from the office of Additional S.P. is marked as Ex.P/2 and P/3. Lateron, the team for search was constituted and they proceeded to the spot as per secret information and there the present appellant was found carrying white bag with him. He was immediately intercepted and he was made aware of the right which has been conferred on such persons under the Act. Further the notice as required under Section 50 of N.D.P.S. Act was served upon the applicant as Ex-P-6. Thereafter, the search team made available themselves for being searched by the present appellant and after that the search was conducted by the police team, during the search of the bag which was in possession of the present appellant it was found that he was carrying polythene bag containing 5 K.G. 500 Grams of Gaanja. Ex-P-8 was the search panchnama, the said search proceedings was witnessed by Tiluram and Jagannath - PW/4 and PW/5 respectively. Though PW/5 has not supported the case of prosecution in its entirety but PW/4 has fully supported the case of prosecution and has been able to establish the entire proceedings drawn so far as the seizure part is concerned.

8. Subsequently the proceedings under the N.D.P.S. Act was concluded and the contraband were seized and the sample collected were brought to the Police Station and handed over to PW/2 - Jankush Toppo, Head Constable who was also Moharrir at Police Station Nagar Naar, District Bastar.
9. Subsequently, the contraband was taken from the police station to the office of S.P. on 22.09.2002 and as is reflected from Ex- P/23

later the same was sent from the office of S.P. to the forensic laboratory at Raipur and the forensic laboratory has finally given its report – Ex-P/25 dated 03.10.2002 holding that the contraband which was sent for forensic examination has been found to be positive and it was conducted as Gaanja.

10. Given the aforesaid facts and circumstances of the case what clearly reflects is that the prosecution has been able to establish the statutory compliance as is required under the provision of NDPS Act particularly the provision of section 42 and 50 of NDPS Act. Moreover, the case of the prosecution also stands proved from the statement of the independent witness PW/4 – a witness to the seizure proceedings.
11. Given the aforesaid facts of the case this Court does not find the finding of Trial Court in convicting the appellant for the offence under Section 20(B)(ii)(b) in any manner either erroneous or contrary to the evidence available on record or in violation of the provisions of NDPS Act.
12. Now coming to the issue of sentence part, if we look at the entire factual matrix of the case it reflect that, the present applicant at the time of prosecution was aged around 19 years. Though the appellant has subsequently pending the present appeal produced document wherein he has claimed that at the time of incident he was aged around 16 years but there does not appear to be any strong evidence in this regard adduced by the appellant.
13. Given the entire facts and circumstance of the case and considering the age of the accused at the time the incident and the fact that the applicant has already remained in custody and undergone the

sentence of about 14 ½ months this Court is of the opinion that ends of justice would meet if the sentence awarded to the appellant is reduced from 3 ½ years to the period he has already undergone.

14. Thus the appeal is allowed in part to the extent that the conviction part stands maintained, however, the sentence part stands reduced to the period already undergone.

Sd/-
(P. Sam Koshy)
Judge

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