

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 4-10-2018****Delivered on 5-10-2018****CRIMINAL APPEAL No. 1165/2001**

(Arising out of judgment of conviction and order of sentence dated 29th September, 2001 passed by Special Judge constituted under Narcotic Drugs and Psychotropic Substances Act, 1985 in Special Case No. 25/2001)

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Jagdish alias Manoranjan son of Kartik Basad, aged 28 years, occupation agriculture, R/o. M.V. 81, PS Motu, Distt. Malkangiri, Orissa

----Appellant**-Versus-**

State of Chhattisgarh, through P.S. Bodhghat, Distt. Jagdalpur, CG

----Respondent

For appellant : Shri Y.C. Sharma, Adv.

For State : Shri Ashok Swarnkar, PL

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. In this criminal appeal challenge levied is to the judgment of conviction and order of sentence dated 29th September, 2001 passed by Special Judge constituted under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act') (CG) in Special Case No. 25/2001 whereby and whereunder he convicted the appellant for the offence punishable u/s 20(b)(i) of the NDPS Act and sentenced him to undergo RI for 2 years and to pay fine of Rs. 2,000/-, in default of payment of fine, to further undergo additional RI for six months.

2. In brief, case of the prosecution is that on 6-4-2001 the in-

charge Bus Stand police chowki, Police Station Bodhghat had informed Sub Inspector S.R. Netam, PS Bodhghat that one person seated in a bus going from Kota to Durg is transporting Ganja. After completing some formalities, Sub Inspector S.R. Netam seized 5 kg ganja from possession of the appellant. After completing the investigation a charge sheet was filed against him. Trial Court framed charge against him under Section 20(b)(i) of the NDPS Act. He abjured the charge and faced trial. After conclusion of the trial, Trial Court convicted him as aforesaid.

3. Shri Y.C. Sharma, counsel for the appellant urged at this stage, that he is not challenging the conviction of the appellant rather he is challenging only the aforesaid period of sentence of RI. He further submitted that the appellant has already undergone about 11 months thus the period of RI for two years may be reduced to the period already undergone.

4. Shri Ashok Swarnkar, Panel Lawyer argued that aforesaid RI is just and proper and does not call for any interference.

5. At the time of the incident, no minimum imprisonment was provided for the offence punishable under Section 20(b)(i) of the NDPS Act. The appellant has remained in jail for about 11 months. About 17 years and 5 months have passed after the incident. At the time of incident, he was aged about 27 years, now he is about 44 years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 17 years of the incident. Looking to these

circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] I am of the opinion that cause of justice would be subserved, if RI of two years is reduced to the sentence for the period already undergone by him and fine of Rs. 2,000/- is enhanced to Rs. 15,000/-.

6. Consequently, the appeal is partly allowed. The sentence of the appellant for RI for 2 years is reduced to the period already undergone by him and fine of Rs. 2,000/- is enhanced to Rs. 15,000/- (Rupees fifteen thousands only), in default of payment of fine, to further undergo RI for six months.

7. The appellant is granted two months' time from the date of receipt of certified copy of this order for depositing the fine amount. The fine amount, if deposited earlier by the appellant shall be adjusted in the fine amount of Rs. 15,000/-.

8. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C.

9. Seized Rs. 200/- be returned to the appellant after expiration of prescribed period of legal proceeding available to the parties.

Sd/-
(Sharad Kumar Gupta)
Judge