

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 2 of 2006

Santosh Kumar Dubey, aged 40 years, S/o. Pyarelal Dubey, Occupation – Driver, R/o. Mohbhatta, P.S. - Bemetara, District – Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh

-----Respondent

For Appellant	: Mr. Vinod Tekam, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/02/2018

Heard.

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Special Judge (N.D.P.S. Act), Durg, District - Durg in Special Case No.25/2004 on 28.11.2005 convicting the appellant for the offence under Section 20 (B) (2) (B) of N.D.P.S. Act and sentenced to under go R.I. for 2 years along with fine of Rs.10,000/- with default stipulation.
2. Facts of the case in brief is this that on the basis of one information received from the informer on 25.08.2004, appellant was apprehended and searched, following the procedure laid down

under the provisions of N.D.P.S. Act. On search 4.100 Kg. Ganja was found in possession of the appellant kept inside the kitchen of the house. Seizure was made and after completing other procedure weight, sample and packaging, panchnama was prepared for the same and FIR Ex.P-27 was lodged registering the offence against the appellant. After completion of investigation, charge-sheet was filed before the concerned Court.

3. Appellant was charged with offence under Section 8 (C) read with Section 20 (B) of N.D.P.S. Act, 1985. The appellant denied the charges and prayed for trial. The prosecution examined 14 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. The grounds of appeal are these, that the trial Court has passed erroneous judgment on the basis of the unbelievable statement of the prosecution witnesses, therefore, the appellant was entitled for acquittal. It is further submitted that out of the total period of sentence of two years, appellant has already suffered imprisonment of 1 year and 7 months in jail. In case this Court is not inclined to allow this appeal, it is prayed that the sentence awarded against the appellant may be reduced in the interest of justice.

5. Counsel for the State opposes the submission made and the grounds in appeal and submits that the prosecution has proved its case beyond all reasonable doubts and there is no scope for intervention in the impugned judgment of conviction and order of sentence.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. Inspector Shyam Sunder Sharma (P.W.-11) has stated, that on 25.08.2004, he received information from one informer, that the appellant has purchased illicit narcotics substance and has kept in his possession in his house. After making entry in the Station House Diary, panchnama Ex.P-2 was recorded. One intimation was immediately sent to the superior authorities vide Ex.P-3. He proceeded towards the spot along with the staff. On the spot, appellant was found present. A notice under Section 50 of the Act, of 1985 vide Ex.P-4 was served upon him. On search made in the house of the appellant, on the basis of the consent given vide Ex.P-5, a plastic bag was found in the kitchen room containing narcotics substance Ganja. Search memo was prepared vide Ex.P-9 and recovery memo was prepared vide Ex.P-10. The narcotics substance was tested for identification and confirmed that it was Ganja vide Ex.P-11. Weighment procedure was carried out vide Ex.P-13 and the weight of the Ganja was found to be 4.100 Kg.. Samples were prepared by Ex.P-14. Samples and remaining Ganja packed and sealed vide Ex.P-15. All the articles seized from the

spot were brought to the police station and deposited in Malkhana regarding which Station House Diary entry was made vide Ex.P-16. On the basis of the proceedings taken, FIR Ex.P-27 was lodged. It was this witness, who has completed the investigation and filed the charge-sheet.

8. In cross-examination, there is no such statement given by this witness, which can be held contrary against the statement made by him in examination-in-chief and also he has denied adverse suggestions given by the counsel for the defence.
9. Kumar Das (P.W.-4) has partly supported the version of the inspector Shyam Sunder Sharma (P.W.-11). Kishore Khilyani (P.W.-5) has supported the weighment procedure conducted on the spot. Constable – Sukhnandan Singh (P.W.-10) has fully supported the statement given by inspector Shyam Sunder Sharma (P.W.-11) and A.S.I. Laxmi Prasad (P.W.-12) has also stated that he was in the company of the inspector Shyam Sunder Sharma (P.W.-11) at the time when, the proceeding of search and seizure was taken up. Head Constable – Vijay Kumar Singh (P.W.14) has stated about the deposit made of seized articles in Malkhana of the Police Station and also about sending the samples for FSL examination.
10. Inspector Shyam Sunder Sharma (P.W.-11) is the main witness and his statement has remained totally unrebuted. Further his statement has been supported by the witnesses named in the paragraph above. Hence, there appears to be no such challenge as to the procedure conducted of the search and seizure and also there is no

such challenge to the article of seizure that was Ganja the narcotics substance. Hence, on the basis of this finding, no error is found with the impugned judgment on the basis of which it can be interfered with. On these grounds, the finding of conviction against the appellant recorded by the trial Court seems to be based on evidence of the prosecution brought beyond reasonable doubt, which needs no interference.

11. Regarding alternative submission made by the learned counsel for the appellant as the appellant has already suffered 3/4 part of the sentence of imprisonment awarded to him by the impugned judgment needs consideration.
12. As the case is of the year 2004 and this appeal is taken up after lapse of 13 years. The appellant was in detention during the whole trial, it shows that the appellant was granted bail by the Appellate Court on 27.03.2006 and subsequent to that due to his non-appearance before the Registry of this Court, non-bailable warrant has been issued against the appellant and appellant has been arrested and placed in detention from 12.02.2018, which shows that the appellant is in detention for further 8 days. Hence, in total appellant has remained in jail for 1 year, 7 months and 11 days.
13. During the lapse of time, appellant has suffered sufficient rigour, hence, for this reason I am of this opinion that prayer made on behalf of the appellant for reduction of the sentence is proper. On that basis, the appeal is allowed in part, without inferring with the finding of conviction in the impugned judgment, the sentence of

imprisonment ordered by the trial Court against the appellant is modified and reduced to the period of custody of the appellant already undergone in jail during the pendency of the trial and appeal. The appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram