

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 20-2-2019****Delivered on 21-2-2019****CRIMINAL APPEAL No. 978/2001**

(Arising out of judgment of conviction and order of sentence dated 1-10-2001 passed by Special Judge constituted under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act'), Bilaspur (CG) in Special Case No. 56/2000)

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1. Badri Prasad Jaiswal (**since deceased**)
 2. Nandkishore son of Badri Prasad Jaiswal, aged 34 years resident of village Chhurikala, P.S. Katghora, Distt. Korba (CG)

----Appellants**-Versus-**

State of Chhattisgarh, through SHO, PS Katghora, Distt. Korba (CG)

----Respondent

For appellant No. 2 : Shri Yogersshwar Sharma, Adv.

For State : Shri Wasim Miyan, 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 1-10-2001 passed by Special Judge constituted under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act'), Bilaspur (CG) in Special Case No. 56/2000 whereby and whereunder he convicted the appellants for the offence punishable u/s 20(b)(i) of the NDPS Act and sentenced each of them to undergo RI for 2 years and to pay fine of Rs. 5,000/-, in default of payment of fine, to further undergo additional RI for six months.

2. During the pendency of this appeal, appellant No. 1 Badri Prasad Jaiswal has died, therefore, his appeal stood abated.

3. In brief, case of the prosecution is that 3-9-2000 from the joint possession of house of appellants at village Chhurikala, 2 kg cannabis was seized. After completing the investigation a charge sheet was filed against them. Trial Court framed charge against them under Section 20(b)(i) of the NDPS Act. They abjured the charge and faced trial. After conclusion of the trial, Trial Court convicted them as aforesaid.

4. At the outset, counsel for the appellant urged 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 jail sentence of 1 year and 29 days thus the period of RI of two years may be reduced to the period already undergone by him.

5. The Panel Lawyer appearing for the State argued that aforesaid RI is just and proper and does not call for any interference.

6. 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 1 year and 29 days. About 18 years have passed after the incident. At the time of incident, he was aged about 34 years, now he is about 52 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 18 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 sub-served, if RI of two years is reduced to the sentence for the period already undergone by him and fine as awarded by the trial Court.

7. 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. The fine sentence and default clause awarded by the trial Court are affirmed.

8. If the fine amount is not deposited by the appellant, the trial Court shall proceed in accordance with law and procedure.

9. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months as per requirement of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge