

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 736 of 2001

Order reserved on 08.08.2019

Order pronounced on 09.08.2019

Jairam, S/o Kanhaiya Ram Sahu, aged about 46 years, R/o
Navapara Pandatarai, Thana Kunda, District Kawardha (CG)

---- Appellant

Versus

State of Chhattisgarh through District Magistrate, Kawardha (C.G.)

--- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate

For State/Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Facts of the case in brief are that on 28.07.2000 acting upon a secret information from PW-1 and PW-5, Sub Inspector (PW-4) along with his associates went to the spot and apprehended the accused/appellant who was transporting Ganja on his bicycle from Village Navapara Pandatarai to Raitapar Pandatarai. Subsequently, he drew Panchnama before two witnesses namely Rajendra Chandravanshi (PW-1) and Malik Ram (PW-5). Appellant was informed of his rights to be searched by a gazetted officer or a Magistrate, and after obtaining his consent in writing. On being searched, one white bag hanging in his bicycle was found which contained Ganja and on weighment being done with the help of scale of vegetable vendor, was quantified to be two and a half kilogram. On being examined by sniffing, tasting etc. the article seized was confirmed to be Ganja. After samples being made and sealed they were sent for chemical examination which ultimately turned out to be Ganja vide report Ex.P-23. After registration of FIR, investigation being undertaken, *challan* came to be filed against the accused/appellant under Section 20 (B) (1) of Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity "NDPS Act") by framing of charge accordingly.

2. Learned Special Judge, Bilaspur by the judgment impugned dated 30.05.2001, held the accused/appellant guilty under Section 20 (B) (1) of the NDPS Act and sentenced him to undergo RI for 7 years with fine of Rs.10,000/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that the evidence of PW-1 and PW-5 is untrustworthy and, therefore, the conviction of the accused/appellant based thereon cannot be sustained under the law. He submits that procedural formalities as mandated under the law have also not been taken care of in its proper perspective and for this reason also the judgment impugned is liable to be struck down. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

4. Having perused the evidence of the witnesses it undisputedly emerges that the appellant was apprehended by PW-4, apprised of his legal rights and privileges of making a search of the Police people and then on search he was found in possession of two and a half kilogram of Ganja which after being examined physically and chemically came to be confirmed as such vide Ex.P-23. On being subjected to weighment in the scale of a vegetable vendor the contraband turned out to be two and a half kilogram. PW-1 and PW-5 on whose tip off the appellant was apprehended have also supported the case of the prosecution stating the search, seizure, weighment of the contraband etc. made in their presence. Thus the act of the accused/appellant of being involved in illegal transportation of Ganja without there being any licence to that effect is duly proved and there is no discrepancy in the finding so recorded by the Court below holding him guilty under the NDPS Act. Conviction part of the judgment impugned is, therefore, maintained.

5. As regards sentence keeping in mind the fact that the incident had occurred in the year 2000 and that the accused/appellant has already

suffered in prison for about one and half years, no useful purpose is going to be served in again lodging him in jail. Being so, the jail the sentence imposed on him is reduced to the period already undergone. The sentence of fine awarded by the Court below is however left undisturbed.

6. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge