

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 15-02-2019****Delivered on 15-03-2019****CRA No. 146 of 2009**

- Jaipal Prasad Sahu, s/o. Late Shri Sunder Lal Sahu, aged 45 years, resident of village Kargikala, PS Kota, Dist. Bilaspur (CG).

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Kota, Dist. Bilaspur (CG).

---- Respondent

For Appellant	:	Mr. Bhupendra Singh, Advocate appears as Amicus Curiae
For respondent/State	:	Mr. V.B. Singh, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 16-12-2008 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") District Janjgir Champa (CG) in Special Criminal Case No. 22 of 2008 wherein the said Court has convicted the appellant for commission of offence under Section 20 (a) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.2000/- with default stipulations.

2. As per prosecution case, on 3-9-2008 at 8.00 a.m., Asst. Sub Inspector , Police Station Kota received information that the appellant in his house courtyard raised a tree of Ganja. He recorded the same in Panchnama and information was sent to superior officer and thereafter police personnel rushed to the spot and found one tree of Ganja in the courtyard of the house of the appellant. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) There is no document related to the ownership of the house, therefore, appellant cannot be connected for the articles seized from any land..
- ii) The exclusive possession of the appellant is not proved before the trial Court. The prosecution has flouted all the binding provisions of the Act, 1985, therefore, finding of the trial Court is liable to be reversed.
- iii) The finding of the trial Court is improper and incorrect and same is not liable to be sustained.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The case of the prosecution is based on seizure of one plant of Ganja in the courtyard of the house of the appellant. No record was produced before the trial Court that the land in question was in exclusive possession of the appellant. For establishing charge of cultivation of Ganja, it has to be established that the appellant did positive act for growing the tree like sowing seeds, providing fertilizer and irrigation, but from the evidence it is not clear as to how the plant is grown. The case of the prosecution is based on seizure which is done within an hour, but from the evidence, it is not clear as to how the plant is grown-up. There is possibility of sprouting of seeds which cannot be termed as cultivation of Ganja. The prosecution was under obligation to prove that it is not a case of sprouting of Ganja, but it is a case of cultivation, but evidence on this count is lacking. If growing up of tree is due to sprouting, the same cannot be said to be cultivation by any one. This aspect of the matter has not been looked into by the trial Court and finding of

the trial Court is based on seizure which is not sustainable unless there is cogent evidence of exclusive possession of the appellant land in question and cultivation by him. The finding of the trial Court is not sustainable.

9. Accordingly, the appeal is allowed. Conviction and sentence of the trial Court is set aside. He is acquitted of the charge framed against him. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(RAM PRASANNA SHARMA)

Judge

Raju