

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 591 of 2019

Reserved on : 21.10.2019

Delivered on : 04-12-.2019

Bhagwati Bai Sahu, W/o Hirau Ram Sahu, aged about 50 years, R/o Near Naharpar, Ward No. 58, Police Station- Mohan Nagar, District- Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through- Police Station- Mohan Nagar, District- Durg (C.G.)

---- Respondent

For Appellant : Mr. Mirza Keshar Beg, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 16.01.2019 passed by Special Judge (NDPS Act), Durg (C.G.) in NDPS Special Case No. 22/2018, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 1 year and fine of Rs. 10,000/- with further default stipulations.
2. As per case of the prosecution, on 20.04.2018 at about 8:10 a.m., Assistant Sub-Inspector of Police Station- Mohan Nagar namely Daya Shankar Pandey (PW-5) received information through informer that

the appellant named above who is residing in Narharpar, Urla selling ganja to customers. After receiving the information, legal formalities were complied with, thereafter, police party made a search and on search 1 kg. & 200 grams of contraband article ganja was found in possession of the appellant in a small bag. The matter was investigated, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Mandatory provision of Section 50 of the Act, 1985 is not complied with, therefore, finding of the trial court is not liable to be sustained.

(ii) There is no corroboration to the evidence of investigating officer. In absence of corroboration, it is not safe to convict the appellant in the crime in question.

(iii) The finding arrived at by the trial court is not proper, therefore, the same is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. First question for consideration before this Court is whether the appellant was in possession of contraband article ganja. Assistant Sub-Inspector- Daya Shankar Pandey (PW-5) deposed before the trial

court that on information about sale of contraband article ganja by the appellant, he recorded the information in Rojnamcha Sanha as per Ex. P/22 and information was sent to City Superintendent of Police, Durg which is received by Reader of the said office and the same was registered in Rojnamcha Sanha as per Ex. P/27. As per version of this witness, he proceeded to the spot with lady Constable- Pushpa Rajput (No. 246) and other constable. A notice under Section 50 of the Act, 1985 was served to the appellant and search of appellant was made by lady Constable- Pushpa Rajput. After search, ganja was found in a bag from possession of the appellant. After weighing the article, the same was found to be 1 kg & 200 grams. Sample of 50 grams was separated from the seized article. The sample and rest of the article were sealed and information was sent to Superintendent of Police, Durg.

7. The sample was sent to Forensic Science Laboratory for chemical examination and acknowledgement of depositing the sample is Ex. P/34. Seized article was produced before the trial court. As per report of Forensic Science Laboratory (Ex. P/36), test of ganja was found positive. Version of this witness is supported by version of Head Constable- Prakash Das who received the information regarding offence in the office of Superintendent of Police, Durg. Again, it is supported by version of Head Constable- Bihari Lal Banjare (PW-7) who is in-charge of Malkhana and who received the seized article and kept the same in Malkhana. As per version of this witness, sample was sent to Forensic Science Laboratory for chemical examination

through Constable- Ramesh Yadav and test report is received with article through Constable No. 1465. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. From the entire record, it is clear that a notice was served to the appellant as per Section 50 of the Act, 1985 and property was kept in safe custody of Malkhana as per Section 55 of the Act, 1985 and report regarding seizure and arrest was sent to higher authorities as per Section 57 of the Act, 1985, therefore, argument advanced of behalf of the appellant that procedure was not followed as per the Act, 1985 is not acceptable.
9. The quantity of contraband article seized in the present case is more than small quantity. As per the notification, quantity of 1 kg. is small quantity and more than 20 kg. is commercial quantity. The quantity of contraband article seized in the present case is more than 1 kg. is neither small nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 and deterrent punishment is required under the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

10. Looking to the quantity of contraband article ganja, the trial court awarded jail sentence of 1 year and fine of Rs. 10,000/- to the appellant which cannot be termed as harsh, disproportionate or

unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

11. The appellant is reported to be in jail, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun