

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 449 of 2001

Reserved on : 20.12.2019

Delivered on : 06.02.2020

Hiraman Lal Halba, aged about 45 years, S/o Shri Parsadi Lal Halba, Agriculturist, R/o Godalwahi, Chhotepara, Salhetola, P.S. Dongargaon, District- Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant : Mr. Shashi Bhushan Tiwari, 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 28.03.2001 passed by Special Judge, Rajnandgaon (C.G.) in Special Case No. 51/2000, wherein the said court convicted the appellant for commission of offence under Section 20(b)(i) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 5 years and fine of Rs. 5000/- with further default stipulations.
2. As per case of the prosecution, information was received by police officer of Police Station- Rajnandgaon that the appellant has cultivated contraband plant. After complying with all the legal formalities, the

police officer reached to the spot and seized the contraband plants. 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) The land from which the plants were seized is not clarified by the prosecution and the same is not proved to be of the appellant. No record of right and record of possession are produced before the trial court.

(ii) There is no evidence that the appellant sown seeds of cannabis. He has no role to play in growing the plant. Naturally plant takes 4-9 months to grow, but for that period, there is no evidence against the present appellant.

(iii) From evidence of Dukal Das (PW-4) (Para 7), it is established that such plants are found in the village in different part and seizure in the present case is also made from different part which is not connecting piece of evidence against the appellant.

(iv) The field from which plant was seized is open field in which anyone can enter.

(iv) Gopal Singh (PW-3) deposed (Para 4) that after consuming ganja, seed is thrown and it can grow at any place.

(vi) There is no evidence against the appellant, therefore, the finding arrived at by the trial court 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. From evidence of Ajay Shankar Tripathi (PW-12), Dukal Das (PW-4) & Domar Singh (PW-7), it is established that the plants were seized from kitchen garden. As per version of Dukal Das (PW-4), it was seized from different kitchen garden. No record of right is produced before the trial court to establish survey number and area of the land where the plants were seized. There is no evidence that the appellant sown seeds of contraband and he had any role to play in growing the plants. The case of the prosecution is based on seizure from different kitchen garden, but it is not clear as to who is the person responsible for cultivation of plant.
7. In the matter of **Bhawan Sai Vs. The State of MP**, reported in **2009 (1) C.G.L.J. 381**, it is held that in absence of evidence that the appellant has cultivated the plant, it is not enough that few plants were found in the property the appellant. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happen to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation. From the entire evidence, role of the appellant in cultivation of cannabis plant is not proved. The charge under Section 20(b)(i) of the Act, 1985 is not established, therefore, the finding arrived at by the trial court is not sustainable.
8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge

under Section 20(b)(i) of the Act, 1985.

9. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun