

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 895 of 2002**

Rakhal Majumdar, S/o Kulindhar Majumdar, aged about 23 years,
Occupation: Agriculturist, R/o P.V. No.31, P.S-Kalimela, District-
Malkangiri (Orissa)

---- Appellant

Versus

State Of Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Usha Chandrakar, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

27.01.2020

1. This appeal has been preferred against the judgment dated 27.06.2002 passed in Special Case No.13 of 2002 by the learned Special Judge (N.D.P.S) Jagdalpur (C.G.) wherein, the Appellant has been convicted under Section 20 (b) (i) of NDPS Act and sentenced to undergo RI for 3 ½ years and to pay fine of Rs.6,000/- with default stipulation.
2. According to the case of prosecution, on 24.04.2002, P.D. Kujur A.S.I of police station Bodhaghat received a secret information that one person is traveling in bus bearing registration No.MP 23 J 688 and was illegally carrying contraband Ganja with him. He recorded the said information in the Rojnamcha Sanha vide Exhibit P-13 (c) and informed about it to the higher officials, thereafter he reached the spot along with the witness and gave notice under Section 50 of the NDPS Act to the Appellant and obtained his consent for search. On being searched, total 14.00 Kg of contraband Ganja which the Appellant was carrying in one *Jhola* and in one bag was

found from his possession. From the seized contraband ganja three sample packets of 25 grams each were prepared and the left over articles was sent to the Malkhana of the concerned Police Station. He recorded the FIR vide Exhibit-P/21 and sent the information regarding complete proceedings to the higher officials. The sample packets were sent to the FSL Raipur (C.G.), from where the report confirmed that the said article was Contraband Ganja. After completion of investigation, charge-sheet was filed by the police. To robe the Appellant, prosecution examined as many as total 05 witnesses. In the statement recorded under Section 313 of Cr.P.C, Appellant abjured the guilt and pleaded his innocence and false implication in the matter. No defence witness was examined. After completion of trial, Trial Court convicted the Appellant and sentenced him as mentioned in Para 01 of this judgment. Hence this appeal.

3. It is submitted by counsel for the Appellant that the Trial Court has wrongly convicted the Appellant without there being sufficient evidence available against him on record. Independent witnesses of the case have not supported the case of the prosecution. It is further submitted by the counsel that provisions of Sections 42, 50 & 52 of the NDPS Act have also not been duly complied with by the prosecution. Therefore, in the above circumstances, the Appellant is entitled to get acquittal. Alternatively, it is prayed by the counsel for the Appellant that during trial the Appellant has undergone for about 2 months & 02 days in jail and after the judgment of the Trial Court he has undergone 04 months in jail. Thus, he has already undergone 06 months and 02 days out of the total jail sentence of 3 ½ years. He has no criminal antecedent and he is facing the *lis* since 2002 therefore, the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.

4. On the contrary, learned State Counsel opposed the prayer and supported the impugned judgment.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
6. After going through the evidence available on record, I find that the Trial Court has rightly convicted the Appellant. The finding of conviction arrived at by the Trial Court is based on the evidence available against the Appellant. Therefore, I find no substance in the arguments advanced by the learned counsel for the Appellant with regard to conviction of the Appellant. Hence, the conviction of the Appellant under Section 20 (b) (I) of NDPS Act is affirmed.
7. Considering the facts and circumstances of the case, particularly, that out of the total jail sentence of 03 ½ years, the Appellant has already undergone for about 06 months & 02 days, he is facing the *lis* since 2002 and he has no known criminal antecedent, I am of the view that the ends of justice would be met if the jail sentence awarded to the Appellant is reduced to the period already undergone by him. Ordered accordingly.
8. Consequently, the appeal is partly allowed to the extent indicated above.
9. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge