

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 581 of 2006

Smt. Pinki aged about 30 years W/o Fransis Verdhon, R/o. Village Jangudih, P.S. Nawlaghat, District Gajapatti (Orrisa).

---- Appellant

Versus

State of Chhattisgarh, through P.S. Torwa, Bilaspur, CG. ---- Respondent

For Appellant : Smt. Nirupama Bajpai, Advocate

For State/Respondent : Shri Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

05/08/2020

This appeal is directed against the judgment of conviction and sentence and order of sentence dated 22.07.2006 passed by Special Judge, under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Bilaspur, CG. in Special Criminal Case No. 12/2005 whereby the learned Special Judge has convicted the appellant for the offence punishable under Section 20 (B) (II) (b) of the NDPS Act, 1985 and sentenced him to undergo RI for 3 years and fine of Rs. 5,000/-, plus default stipulation.

2. Case of the prosecution, in brief are that on 22.03.2005 Police received a secrete information from the informant that the present appellant along with other co-accused Balihar Singh were in illicit possession of Ganja and they are coming from Hawra – Ahmadabad train to Bilaspur for selling of Ganja in a black suit case air bag and plastic basket. The said information was recorded in *rojnamcha* (Ex. P-2) and the Investigating Officer (PW-2) along with his staff

reached to Bilaspur railway station and on the basis of information received they made a search of the same aged man and women and near auto stand of bilaspur railway station they caught the present appellant along with the co-accused with black suit case and plastic basket. Thereafter they informed them regarding the information received and further gave him a notice under the relevant provision of NDPS Act that they may be searched before the Gazetted Officer or Executing Magistrate if they wishes so. After the said notice, the present appellant along with co-accused consented for the search of themselves by Investigating Officer. Thereafter, on being searched and 8 kg 900 grams and from other co-accused 4 kg 600 grams of (contraband) *Ganja* were recovered, which was confirmed during physical examination. The Investigating Officer prepared two packet samples of of 50-50 grams under Ex.P-25 and seized the remaining *Ganja*. Thereafter the FIR was lodged by the Investigating Officer (PW-2) and copy of the FIR was sent to the concerned Magistrate. The sample packets were sent for Forensic Science Laboratory under Ex.P -42 which after analysis found to be *Ganja*. After completion of investigation, charge-sheet was filed before the concerned Court. The learned Special Judge under the NDPS Act conducted the trial and sentenced him for the offence as mentioned above. Hence this appeal.

3. During the course of arguments, learned counsel for the appellant submits that she wants to argue only on the question of sentence and she has not disputing the conviction. She further submits that the appellant is in custody since 22.03.2005.

4. State counsel opposes the argument advance in this behalf and submits that looking to the act of the accused/appellant, the trial Court rightly convicted and sentenced the appellant. The judgment passed by the Court below is well founded and there is no scope for any interference, hence the appeal may be dismissed.

5. Having heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

6. After closely scrutinizing the evidence of all the witnesses, it is found that the conviction of the appellant is based on the evidence of Assistant Sub-Inspector T.P. Singh (PW-2). Evidence reveals that though the independent witnesses have turned hostile yet the police people who searched the accused, effected seizure of contraband from him, drawn samples and sent the same the Forensic Science Laboratory for chemical examination has clearly supported the case of the prosecution and he being merely a police personnel cannot be dis-believed nor his testimony can be discarded. If his evidence is seen minutely, it clearly emerges that he apprised the accused of her legal rights of being searched by Executive Magistrate or Gazetted Officer, but the accused showed her readiness of being searched by himself. He has further stated in categorical terms that on weighment of contraband the same came out to be 8 kg 900 grams and after receipt of report from the laboratory it was found to be Ganja. The accused/appellant has not pleaded any previous animosity or dispute with the aforesaid police official on the basis of which the possibility of false implication of the accused at her hands could be looked for. In such cases when there is no apparent legal

flaw, the evidence of police officials cannot be ignored. Therefore, after overall consideration of the facts, circumstances and evidence of the witnesses, I come to this conclusion that the trial Court has not committed any error in convicting the appellant for offence in which she has been convicted.

7. Considered the prayer made by the appellant for reduction of sentence and further that there is no allegation made by the prosecution regarding any criminal antecedent of the appellant, I feel inclined to allow the prayer for reduction of the jail sentence.

8. As regards sentence, looking to the facts and circumstances of the case, that the incident had taken place about 15 years back and that the accused/appellant had already remained in jail for about eighteen months ten days and has thereby suffered a lot for her folly, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

9. Appeal is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge