

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 708 of 2009

Reserved on : 04.12.2019

Delivered on : 06.02.2020

Smt. Jyoti Bajaj, W/o Rajkumar Bajaj, aged about 28 years, Occupation- Housewife, R/o Vindhyavasini Ward, Gaddhapara Dhamtari, Police Station- Dhamtari, District- Dhamtari (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Kotwali Dhamtari, District- Dhamtari (C.G.)

---- Respondent

For Appellant : Mr. Amit Kumar Sahu, Advocate.
For State/respondent : Mr. Raghvendra Verma, G.A.

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 03.10.2009 passed by Special Judge (Narcotic Drugs & Psychotropic Substances Act, 1985) (for short "the Act, 1985"), Dhamtari (C.G.) in Special Criminal Case No. 05/2008, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of the Act, 1985 and sentenced to undergo R.I. for 4 years and fine of Rs. 20,000/- with further default stipulations.
2. As per case of the prosecution, on 17.10.2008 at about 2:30 p.m., information was received by Station House Officer of Police Station- City Kotwali that the appellant involved in selling contraband article

ganja from her house. After receiving the information and after complying with all the legal formalities, the police officer reached to the spot and contraband article was found in a plastic 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) The independent witnesses have not supported version of the prosecution, but the trial court failed to appreciate this aspect of the matter.

(ii) Though, seizure has been made from residential area, but none of the person who are residents of that vicinity had been made witness to the proceeding.

(iii) Document has been prepared in police station and not on the spot, therefore, the charge against the appellant is not established.

(iv) The trial court has not evaluated the evidence properly, 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 Inspector- Sapan Choudhary (PW-8), it is established that information was received against the appellant regarding possession of contraband article ganja which was recorded

and information was sent to Sub-Divisional Officer (Police), Dhamtari and he reached to the spot with police personnels and notice was served to the appellant regarding her right to be searched by Magistrate or Gazetted Officer, but she opted to be searched by this officer, thereafter, the police personnel searched the appellant, but no objectionable article was found in her possession. On search of house of the appellant, one plastic bag having contraband article was found which was weighed and was found to be 4 Kg. & 300 grams. As per version of this witness, two samples of 50 grams each were prepared and sample and rest of the article was seized and sealed. The seized article were handed over to In-charge of Malkhana for safe custody. The sample was sent for examination to Forensic Science Laboratory and as per the report (Ex. P/39), test of ganja was found positive.

7. The information regarding search and seizure was sent to Deputy Superintendent of Police, Dhamtari and received the acknowledgement as per Ex.P/31. Version of this witness is supported by version of Assistant Sub-Inspector-Lakhan Lal Suryavanshi (PW-7) who was In-charge of Malkhana of Police Station- City Kotwali who received the article and register it in the register for this purpose (Ex.P/20) and kept the same in safe custody of Malkhana. Again, it is supported by version of Constable-Dinesh Turkane (PW-5). It is further supported by version of Constable-Narendra Sahu (PW-4) who deposited the sample in Forensic Science Laboratory for examination. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.

8. From the entire evidence, it is established that the seized article was kept in safe custody of Malkhana as per provision of Section 55 of the Act, 1985. Information of search and seizure was sent to higher authority which is compliance of Section 57 of the Act, 1985. Further, Section 50 of the Act, 1985 after giving notice to the appellant for search is also complied with, therefore, the argument advanced on behalf of the appellant is not sustainable.
9. The act of the appellant falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 for which the trial court convicted the appellant and her conviction is hereby affirmed.

Heard on the point of sentence.

10. The appellant has suffered jail sentence from 17.10.2008 to 20.04.2009 i.e. for 6 months 2 days and from 03.10.2009 to 19.11.2009 i.e. for 1 month & 17 days. She has suffered jail sentence for more than 7 months. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by her. Accordingly, her sentence is reduced to the period already undergone by her. However, the fine amount imposed by the trial court shall remain intact.
11. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge