

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 301 of 2011

Reserved on : 19.02.2020

Delivered on : 08.05.2020

Raju Tiwari, S/o Gopi Chand Tiwari, aged about 51 years, Occupation- Nuts Seller, R/o Dondi Lohara, P.S. Dondi Lohara, District- Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S. Dondi Lohara, District- Durg (C.G.)

---- Respondent

For Appellant : Mr. Vivek Sharma, 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 11.02.2011 passed by Special Judge (NDPS Act), Durg (C.G.) in NDPS Special Case No. 03/2006, 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 4 years and fine of Rs. 5000/- with further default stipulations for having possession of contraband article ganja to the tune of 8 kg. on 27.01.2006 at 20:30 O'clock at Bus Stand- Dondi Lohara.
2. As per case of the prosecution, on 27.01.2006, In-charge of Police Station- Dondi Lohara namely Vipin Rangari (PW-7) received

information that the appellant is having possession of contraband article ganja and is going towards bus stand of Dondi Lohara. One Panchnama about the information was prepared and the same was given to superior officer, thereafter, independent witnesses were called and Investigating Officer reached to the spot with police personnel and independent witnesses. After search, the appellant was found in possession of contraband article ganja. Two samples of 25 grams each were separated and the same was sealed. Rest of the article was also sealed. After all the legal formalities, the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) The independent witness namely Ganesh (PW-4) has not supported version of the prosecution, therefore, case of the prosecution is not proved.
 - (ii) Malkhana Register was not produced along with the charge-sheet, therefore, case of the prosecution is doubtful.
 - (iii) 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. In-charge of Police Station- Dondi Lohara namely Vipin Rangari (PW-

7) deposed before the trial court that he received information on 27.01.2006 at 20:30 O'clock that the appellant is in possession of contraband article ganja and is going towards Dondi Lohara. This information was recorded and the same was sent to Sub-Divisional Officer (Police), Balod as per Ex.P/4 thereafter he called independent witnesses and reached to the spot. This witness informed the appellant about his right to be searched by Gazetted Officer or Magistrate, but he opted to be searched by this police officer. The police personnel and independent witnesses were searched by the appellant, but no objectionable article was found in their possession. Thereafter, bag of the appellant was searched in which contraband article was found which was weighed and found to be 8 kg. 2 samples of 25 grams each were separated from the seized article which was sealed and rest of the article was also sealed. The specimen seal was also prepared. The property was handed over to In-charge of Malkhana who kept the same in safe custody of Malkhana. The information of search and seizure was sent to Superintendent of Police, Durg as per Ex. P/17. The samples were sent to Forensic Science Laboratory and as per report of the Laboratory, test of ganja was found positive.

7. Version of this witness is supported by version of Chemical Examiner- Dr. H.S. Bhawra (PW-8) who examined the samples and found it to be ganja. Version of Vipin Rangari (PW-7) is supported by version of Constable- Hiranman Ramteke (PW-1) and Head Constable- Mahang Ram Deshmukh (PW-6). All these witnesses have been subjected to

searching cross-examination, but nothing could be elicited in favour of the defence.

8. From their evidence, it is established that the appellant was in possession of contraband article ganja. From evidence of Head Constable- Mohan Thakur (PW-5) who was Reader of Sub-Divisional Officer (Police), Balod, it is established that the information regarding possession of contraband article ganja by the appellant was received by his office and the same is compliance of Section 42 of the Act, 1985. From evidence of Vipin Rangari (PW-7), it is established that the appellant was given notice to the appellant regarding his right as per Section 50 of the Act, 1985. As per version of Assistant Sub-Inspector- Kartik Ram (PW-2), the seized article was kept in safe custody of Malkhana which is compliance of Section 55 of the Act, 1985. From evidence of Vipin Rangari (PW-7), it is established that the information regarding search and seizure were sent to the higher authority which is compliance of Section 57 of the Act, 1985. On overall assessment of the evidence, it is established that the appellant was in possession of contraband article ganja and all the mandatory provisions of the Act, 1985 were complied with. Taking into consideration the entire evidence, argument advanced on behalf of the appellant is not sustainable.
9. The quantity of contraband article seized in the present case 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 for which the trial court convicted the appellant and his

conviction is hereby affirmed.

Heard on the point of sentence.

10. The appellant has suffered jail sentence from 28.01.2006 to 16.01.2007 and again from 11.02.2011 to 25.02.2013 i.e. for more than 3 years. 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 him. Accordingly, his sentence is reduced to the period already undergone by him. 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