

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 287 of 2009

Reserved on : 12.12.2019

Delivered on : 06.02.2020

Gajendra Singh Thakur, S/o Shyam Sunder Singh, aged about 45 years, R/o Village- Gopalma, Thana- Baraipali, District- Sambalpur (Orissa)

---- Appellant

Versus

State of Chhattisgarh, through the District Magistrate, Janjgir District- Janjgir-Champa (C.G.)

---- Respondent

For Appellant : Mrs. Indira Tripathi, 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 02.04.2009 passed by Special Judge (NDPS Act), Janjgir, District- Janjgir-Champa (C.G.) in Special Criminal Case No. 23/2008, 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 3 years and fine of Rs. 10,000/- with further default stipulations.
2. As per case of the prosecution, on 06.12.2008, information was received by Sub-Inspector- Harprasad Pandey posted at Police Out-post- Naila regarding possession of contraband article ganja by the

appellant. After complying with all the legal formalities, the police officer reached to the spot and after search, 3 packets of contraband article ganja were found in possession of the appellant which was weighed and it is found to be 4 Kg. & 500 grams. 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, therefore, case of the prosecution is not proved.
 - (ii) The investigating officer flouted provisions of the Act, 1985, therefore, conviction of the appellant is not permissible in law.
 - (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. First question for consideration before this Court is whether the appellant was in possession of contraband article ganja. From evidence of Sub-Inspector- Harprasad Pandey (PW-8), it is established that he informed the appellant about his right to be searched by Gazetted Officer or Magistrate, but he opted to be searched by this police officer. All the police personnel were searched,

but no objectionable article was found in his possession. In search, one bag was found in the possession of the appellant in which contraband article was kept in polythene packet which was seized and weighed and after weighed, it was found to be 4 Kg. & 500 grams. The seized article was handed over to Head-Constable- Omkar Prasad Mahto (PW-7) who was In-charge of Malkhana for safe custody. One sample of 50 grams was separated from the seized article and sealed and the same was sent for examination to Forensic Science Laboratory and test of ganja was found positive which is supported by report of Forensic Science Laboratory (Ex. P/33).

7. From evidence of Assistant Sub-Inspector- Kirtanlal (PW-6), it is established that information regarding search and seizure was sent to higher authorities i.e. Sub-Divisional Officer (Police), Janjgir as per Ex.P/23. In this way, provision of Section 57 of the Act, 1985 was complied with. The seized article was handed over to In-charge of Malkhana as per provision of Section 55 of the Act, 1985 to keep it in safe custody and information regarding his right to be searched by Magistrate or Gazetted Officer as per Section 50 of the Act, 1985 was also given to the appellant. In view of the above, there is nothing on record to say that any provision of the Act, 1985 was flouted with, therefore, the argument advanced on behalf of the appellant is not sustainable.
8. 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 his conviction is hereby affirmed.

Heard on the point of sentence.

9. The appellant has suffered jail sentence from 06.12.2008 to 19.06.2009 i.e. for more than 5 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 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.
10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge