

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 737 of 2011

Rambabu Yadav, aged about 52 years, S/o. Madhav Yadav, R/o. Bagbahra, District Mahasamund (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through the Police Station Arang, District Raipur (C.G.)

---- Respondent

For Appellant : Mr. S. Imtiaz Ali, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

09.10.2020.

This appeal is directed against the judgment of conviction and sentence and order of sentence dated 22.09.2011 passed by Special Judge, under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Raipur, CG. in Special Criminal Case No. 02/2009 whereby the learned Special Judge has convicted the appellant for the offence punishable under Section 20 (B) ii (b) of the NDPS Act, and sentenced him to undergo RI for 2 years and fine of Rs. 15,000/-, plus default.

2. Case of the prosecution, in brief are that on 05.01.2009 Police received a secrete information from the informant that the appellant was in illicit possession of Ganja. He prepared a memo of the information and thereafter he sent an intimation to the Dy. Superintendent of Police, Raipur. He went to the spot with the witnesses and asked the appellant about his right and thereafter he issued notice under Section 50 of NDPS to him. After getting his consent under (Ex.P-5), search was conducted during search 5 Kg 200 grams Ganja was found in a plastic polythene which was carried by the appellant. Two samples each of 100 grams were taken out from the seized Ganja and the samples as well as the remaining Ganja were duly sealed in an appropriate manner. Thereafter, dehatinalishi (Ex.P-17) was registered. Seized articles were handed over to In-charge of Malkhanan of the said Police Station who was Head constable Sonprashad Rajotri. The accused/appellant was arrested and FIR (Ex.P/1) was registered. Seized articles were sent for examination to Forensic Science Laboratory, Raipur for chemical examination (Ex.P-20) and as per FSL report under (Ex.P-22), the samples were confirmed 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 he wants to argue only on the question of sentence and he has not disputing the conviction. He submits that the appellant is aged about 62 years, and is suffering from cancer and is undergoing chemotherapy treatment at the Hi-tech Medical College and Hospital at Bhubaneswar and henceforth requirement of further treatment, therefore, his sentence may be reduced to the period of already undergone him.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

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 Inspector J.P.N. Singh (PW-1). Evidence reveals that though the independent witnesses have turned hostile but admitted their signature on the panchanama, yet the police people who searched the accused, effected seizure of contraband from him, drawn samples and sent the same the Forensic Science Laboratory, Raipur 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 his legal rights of being searched by Executive Magistrate or Gazetted Officer, but the accused showed his readiness of being searched by himself. He has further stated in categorical terms that on weighment of contraband the same came out to be 5 kg 200 grams and after receipt of report from the laboratory under (Ex.P-22) it was found to be Ganja. In such cases when there is no apparent legal flaw, the evidence of police officials cannot be ignored and the person like appellant could be convicted for the alleged offence. 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 he 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 11 years back and that the accused/appellant had already remained in jail for about three months fifteen days and has

thereby suffered a lot for his folly, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period already undergone.

9. Appeal is thus allowed in part to the extent indicate above. As the appellant is already on bail, his bail bond stand discharged.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh