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HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 705 of 2008

Appellant
(In Jail)

Kishun Ram S/o Agarsai Rajwade, Aged about - 42 Years, R/o - Village - Sapkara (Baryam), Thana - Surajpur, Distt.- Surguja (C.G.)

Versus

Respondents

State of Chhattisgarh Through:-
Incharge police station-Surajpur, Distt.-
Surguja (C.G.)

(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE)

(SB: HON'BLE SHRI JUSTICE T.P. SHARMA)

Present:

Shri Neeraj Mehta, counsel for the appellant.

Shri Pankaj Shrivastava, Panel lawyer for the State.

ORAL JUDGMENT

(Passed on 30th September, 2008)

This appeal is directed against the judgment of conviction and order of sentence dated 17.7.2008 passed by Special Judge (Under N.D.P.S. Act), Ambikapur, in Special Criminal Case No. 27/07, whereby and whereunder the appellant has been convicted for the offence punishable under Section 20 (B) (2) (B) of the Narcotic Drug and Psychotropic Substance Act, 1985 (hereinafter refereed to as 'the Act') and sentenced him to undergo rigorous imprisonment for 2 years and to pay fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 3 months.

2. The judgment is challenged on the ground that without there being any evidence of conscious possession of the elicited Ganja of less than commercial quantity and ignoring the fact that the prosecution



has not complied with the mandatory provisions of the Act which is meant for safeguard to the accused/appellant, learned trial court has committed an illegality in convicting and sentencing the appellant as aforementioned.

3. According to case of the prosecution, the applicant was found in possession of 3.200 Kg. contraband article (Ganja) on 10.6.2007. After complying the procedure, same were seized. Samples were taken and sent for chemical examination. Dehati Nalishi and FIR were lodged. After recording the statement under Section 161 of the Code of Criminal Procedure, 1973 and after completion of investigation, charge sheet was filed in the Court of the Special Judge, Ambikapur.

4. In order to prove the guilt of the appellant/accused, the prosecution has examined as many as 7 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

5. Learned Special Judge after affording opportunity of hearing to the parties, convicted and sentenced the accused/appellant as aforementioned.

6. I have heard Shri Neeraj Mehta, counsel for the appellant and Shri Pankaj Shrivastava, Panel lawyer for the State and perused the judgment impugned and record of the trial court.

7. Learned counsel for the appellant submits that he is not disputing the conviction, but he wants to argue only on the question of sentence. Learned counsel further submits that the appellant was found in possession of only 3.200 kg. contraband article (Ganja) and same is less than commercial quantity. The appellant has been sentenced of rigorous imprisonment for 2 years and to pay fine



Rs.10,000/- and no previous conviction has been proved against him. He is rustic villager and head of the family. Learned counsel also submits that sentence of rigorous imprisonment for 2 years is harsh and severe.

8. This is a case of 3.200 Kg. contraband article (Ganja) found in possession of the appellant which is less than commercial quantity. Taking into consideration the facts and circumstances of the case, sentence imposed upon the appellant is required for reconsideration.

9. Consequently, the appeal is partly allowed. Conviction is maintained. However, the sentence of rigorous imprisonment for 2 years and to pay fine of Rs.10,000/- is modified and instead thereof, the appellant is sentenced of rigorous imprisonment for 1 year and to pay fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 3 months.

B/-

Sd/-
T.P. Sharma
Judge