

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.156 of 2008

JUDGMENT:

This criminal appeal is preferred by the appellant - accused by invoking the provision under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 25.10.2008, rendered in S.C. No.1 of 2006, by the Special Judge for trial of cases under N.D.P.S. Cases-cum-I Additional Sessions Judge, Srikakulam, whereby and whereunder the learned Sessions Judge found the accused guilty of the offence under Section 8 (c) read with 20 (b) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced him to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.2,000/-, in default to suffer simple Imprisonment for one month.

2. The case of the prosecution in brief is that on credible information on 05.11.2007 regarding possession of ganja by the accused in his house, PW.5 securing the presence of PWs.1 and 2 and conducted search in the house of the accused from 11.00 a.m. to 01.00 p.m. and seized 2 Mica bags each containing 2 paper packets of dry green leaves/seeds/stalks and fruits with tops of Ganja and having ganja odour from the kitchen room under the cover of mediators report and arrested the accused. He weighed the seized four paper packets and the weight of ganja in four paper packets was as follows:

| | |
|---------------|-------------|
| Packet No.1 : | 0.620 grams |
| Packet No.2 : | 0.560 grams |
| Packet No.3 : | 0.550 grams |
| Packet No.4 : | 0.550 grams |

| | |
|---------|-------------------------|
| Total : | <hr/> 2,280 grams <hr/> |
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PW.5 collected two samples from each packet and sealed and affixed identification slips, and registered a case in Crime No.88 of

2005 under Section 20(b) read with 8 of the NDPS Act, 1985 and sent the accused to judicial custody. The samples were sent to the chemical examiner. After completion of investigation and after receipt of the chemical examiner's report, PW.1 filed charge sheet against the accused.

3. After taking cognizance of the charge sheet filed by the Investigating Agency, the Court below took the case on file. On appearance of the accused before the Court, the charge framed against him under Section 8 (c) read with 20 (b) (i) of the NDPS Act was read over and explained to them in Telugu, for which, they pleaded not guilty and claimed for trial.

4. To substantiate the case, the prosecution got examined P.Ws.1 to 6 and marked Exs.P-1 to P-15, besides MOs.1 and 2. On behalf of defence, no oral or documentary evidence was adduced.

5. After appreciating the oral and documentary evidence available on record, the learned trial Judge found the accused guilty of the offence under Section 8 (c) read with 20 (b) (i) of the NDPS Act and sentenced him as stated above. Aggrieved over the same, the accused preferred the present appeal.

6. Heard and perused the entire material on record.

7. Learned counsel for the appellant – accused persuaded the Court and argued for setting aside the conviction and sentence imposed against the accused. But, after perusal of the record and after hearing the arguments, this Court informed that this Court is not inclined to interfere with the conviction since the evidence of PWs-1, 2 and 5 is in clinching nature and Ex.P-13 Chemical Examiner's report disclosed that the samples sent to the Chemical Examiner were tested positive for ganja, and nothing was elicited from the evidence of PWs.1, 2 and 5 to discredit their evidence. Learned counsel for the

appellant – accused also conceded and confined his arguments only to the quantum of sentence imposed against the accused.

8. In view of the said submission, this Court is of the view that the merits and demerits of the prosecution case need not be adjudicated in this appeal.

9. Considering the facts and circumstances of the case, and in view of the time elapsed the sentence of imprisonment imposed by the trial Court on the appellant – accused can be reduced.

10. In the result, the Criminal Appeal is partly allowed. The conviction recorded by the trial Court against the appellant - accused for the offence under Section 8 (c) read with 20 (b) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is confirmed and the sentence imposed is hereby reduced to the period already undergone by the accused and the fine amount is not interfered with. Miscellaneous petitions filed in this criminal appeal, if any, shall stand closed.

RAJA ELANGO, J

July 31, 2014.
KTL