

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 475 of 2014

- Salat Mohammad S/o Salimuddin Aged About 45 Years R/o Village And Post - Narayanpour, Ps Sand Teh. - Ramanujnagar, Rev. And Civil Distt. Surajpur C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Sho, Surajpur, Rev. And Civil Distt. Surajpur C.G. , Chhattisgarh

---- Respondent

For the Appellant : Shri R.K. Pali, Advocate.

For the State/Respondent : Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

30/06/2018

1. This appeal has been preferred against the judgment dated 15.1.2014 passed by the Special Judge, NDPS Act 1985, Raipur in Special Criminal Case No.56/2013 by which the appellant has been convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo RI for 3 years with fine of Rs.5,000/- plus default stipulation.
2. The case of prosecution is this, that on 12.9.2011 on the basis of secret information received by S.I. Santosh Kumar Bhuarya PW-8, the appellant was searched in presence of witnesses after following the provisions of search prescribed under the NDPS Act and 4kg ganja

was recovered and seized from the possession of the appellant. After completion of procedure, FIR Ex.-PW/18 was registered. After completion of Investigation, charge-sheet was filed. Appellant was charged with the offence under Section 20(b)(ii)(B) of NDPS Act. The appellant abjured his guilt. After completion of prosecution evidence, statement of appellant was recorded under Section 313 of CrPC, in which he denied all the incriminating evidence appearing against him in the prosecution case and pleaded innocence. No witness was examined in defence.

3. Impugned judgment has been passed in which the appellant stands convicting and sentenced in the manner as mentioned herein-above.
4. It is submitted by the counsel for appellant that appellant has been erroneously convicted by the trial Court. The independent witnesses have not supported the case of prosecution and turned hostile, however, the trial Court relying on the statement of the police witnesses recorded the finding of conviction which is bad in law. Hence, it is prayed that appeal be allowed and appellant be acquitted of the charge.
5. Learned counsel for the State opposes the submissions made in this respect and it is submitted that the prosecution has proved its case beyond all reasonable doubt. Even after the hostility of independent witnesses examined in support of prosecution, they I.O. and other witnesses clearly stated about the recovery and seizure of contraband from the possession of this appellant and in accordance with

procedure as laid down under the provisions of NDPS Act, hence, finding of conviction recorded by the trial Court does not suffer from any infirmity. Thus, it is prayed that appeal may kindly be dismissed.

6. I have heard both the parties and perused the documents on record.
7. The independent witnesses of search and seizure namely Pramod Singh PW-1, Jitendra Shukla PW-2 & Suraj Soni PW-9 have not supported the case of prosecution and as such they have been declared hostile.
8. The main witness in this case is S.I. Santosh Kumar Bhuarya PW-8. He has stated that after receiving secret information, there was no time to obtain search warrant, therefore, after sending intimation to the immediate superior, he immediately proceeded to the spot along with team for conducting the raid. On seeing the appellant, he was stopped, interrogated and searched, after obtaining his consent for search and during search, 4 kg ganja was recovered from the bag carried by the appellant in the presence of witnesses, which was tested and identified as ganja. Weighment of contraband was also done. Panchnama of all the proceedings taken up were prepared. Subsequent to that, the seized article was handed over to the *Malkhana* in-charge and the sample prepared separately were sent for FSL examination. In cross-examination, this witness remained shaken. Statement of S.I. Santosh Kumar Bhuarya PW-8 has been supported by ASI Pramod Pandey PW-7, who was present in his company throughout the procedure. Head constable Ramniwas Tiwari PW-5

and Dhannalal PW- 3 have stated that information about the proceeding without search warrant was received in the office of CSP, Surajpur by them. The statement of these witnesses is sufficient corroboration.

9. It is a fact that S.I. Santosh Kumar Bhuarya PW-8 is the Police Officer, who made search and seizure and all the procedure of investigation and the independent witnesses have not supported his version. However, only because S.I. Santosh Kumar Bhuarya PW-8 is a Police Officer, his entire statement cannot be disbelieved because he himself is one of the witnesses of search, seizure and other discoveries made during the investigation. Just because he has recorded the *Panchnamas*, it does not mean that he has some personal interest against the appellant. Apart from that no such stand has been taken by the defence, that these witnesses have falsely implicated the appellant. Hence, reliance that has been placed by the trial Court on the evidence of these witnesses cannot be said to be erroneous and after considering on all the evidence available on record, I am of this view that the finding of conviction recorded by the trial Court is based on proper appreciation of evidence available on record and the same does not call for any interference in exercise of appellate jurisdiction. Thus, the conviction of appellant under Section 20(b)(ii)(B) of NDPS Act as recorded by the trial Court is hereby affirmed.
10. At this stage, counsel for appellant prays for reduction of sentence submitting that the appellant is a poor man with no means, hence, fine amount imposed upon him be reduced reasonably. He further submits

that out of total sentence of 3 years, the appellant has already undergone 2 years & 10 months, hence, the sentence of imprisonment be also reduced to the period of detention already undergone.

11. After considering on all the evidence in circumstances in this case, the prayer made by the counsel for appellant for reduction of sentence is allowed.

12. Consequently, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20(b)(ii)(B) of NDPS, the sentence imposed upon him under that section is reduced to the period of detention already undergone. Fine amount imposed on the appellant is also reduced to Rs.5,000/-, in default of payment of fine the appellant shall be required to undergo further rigorous imprisonment of 2 months.

13. Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge