

**HIGH COURT OF JUDICATURE MADHYA PRADESH,**  
**JABAPLUR**

**Single Bench: Hon'ble Mr. Justice N.K.Gupta,J.**

**CRIMINAL APPEAL NO.1004 OF 2012**

Chhotelal Choudhary alias Chhote.  
Vs.  
State of Madhya Pradesh.

-----  
Shri R.B.Gautam, Advocate for the appellant.

Shri Ajay Tamrakar, Panel Lawyer for the respondent/  
State.

**J U D G M E N T**

(Delivered on the 6<sup>th</sup> day of November, 2012)

This criminal appeal is preferred by the appellant being aggrieved by the judgment dated 30/4/2012 passed by the Special Judge under Narcotic Drugs and Psychotropic Substances Act, Satna in Special Case No.85/2009, whereby the appellant was convicted for commission of offence punishable under Section 8(c) read with Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (for short "**NDPS Act**") and sentenced for four years' rigorous imprisonment with fine of Rs.1,000/-. In default of payment of fine amount, two months' RI was also directed.

2. The prosecution's case, in short, is that on 26.11.2009 Shri S.P.Shukla went to search some absconding person. He had lodged an entry in the *Rojnamcha* at Sl.No.2481 about that fact. He received an

information in the way that the appellant was selling some Ganja near the Jail tripartite, Satna. He prepared a memo of the information and thereafter he sent an intimation to the concerned CSP. He went to the spot and asked the appellant about his information. After getting his consent, his search was taken by Shri Shukla. 1.400 Ganja was found in the bag of the appellant, which was duly identified. Two samples each of 25 grams were taken from the seized Ganja and the samples as well as the remaining Ganja were duly sealed in an appropriate manner. The samples were sent to the Forensic Science Laboratory, Sagar for their analysis. By the report Ex.P-31 received from the FSL Sagar, it was found that the entire material was Ganja. After due investigation, a charge sheet was filed before the Special Judge, Satna.

3. The appellant-accused abjured his guilt. He did not take any specific plea in the matter. No defence evidence was adduced.

4. The learned Special Judge after considering the evidence adduced by the prosecution convicted the appellant for the offence under Section 8(c) read with Section 20(b)(ii)(B) and sentenced him as mentioned above.

5. I have heard the learned counsel for the parties.

6. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, it is apparent that the appellant

does not want to challenge his conviction directed by the trial Court, but he has prayed for reduction of the sentence. The learned counsel for the appellant has submitted that the appellant was a young youth of 25 years of age at the time of the incident. It is nowhere mentioned by the trial Court that the appellant was a previous convict. There is a maximum sentence of six months' RI prescribed for the similar offence, if quantity of Ganja is one kilo, therefore when the quantity of Ganja seized from the appellant was 1.400 kg, then the sentence directed by the trial Court appears to be harsh. He remained in the custody for more than nine months. The arguments advanced by the learned counsel for the appellant are acceptable. The appellant was the first offender and only 1.400 kg Ganja was found with him. He remained in the custody for nine months, therefore it is a fit case in which the jail sentence can be reduced to the period which the appellant has already undergone in the custody.

8. On the basis of the aforesaid discussion, the appeal of the present appellant is partly allowed. The conviction directed for the offence under Section 8(c) read with Section 20(b)(ii)(B) of the NDPS Act is hereby maintained, but the jail sentence of the appellant is reduced to the period which he has already undergone in the custody.

9. At present the bail order was passed in favour of the appellant on 14.9.2012, but it is not clear that whether the appellant has furnished the bail bonds or not. If he is in custody, a supersession warrant be issued against him so that he may be released, if remaining fine amount is deposited by him, and if he is on bail, then 60 days' time is granted to deposit the fine amount failing which he shall undergo the default sentence as directed by the trial Court.

10. A copy of this judgment be sent to the trial Court along with its record for information and compliance.

(N.K.Gupta)  
Judge  
06/11/2012

Ansari.