



Checked & Verified, 2013

Single Bench (Criminal)

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28/2

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Cr. A.No. 440 of 1997.



APPELLANTS:- Sheikhu Khan son of Gulmir Khan,
aged 26 years, resident of Idgahbhata,
near Football Ground, Amanala Chowk,
District Raipur, M.P.

Versus

RESPONDENT:- The State of M.P. (Through Amanaka
Chowk Police Station, Distt. Raipur).

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Filed on 25/12/97
by Shri. V.K. Yadav
Advocate

Rto. A. R.

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



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 440 of 1997

APPELLANT

Sheikhu Khan

VERSUS

RESPONDENT

The State of M.P.
(Now the State of C.G.)

[Criminal Appeal u/s 374 (2) of the Code of Criminal Procedure, 1973]

Present:

Mr. Rajesh Singh, Advocate for the appellant.
Mr. Sushil Dubey, Govt. Advocate for the State.

SB: Hon'ble Mr. Goutam Bhaduri, J.

JUDGMENT
(Passed on 01.01.2014)

1. This is an appeal against the judgment of conviction and order of sentence dated 23.12.1996 passed by the Sessions Judge, Raipur, in Special Case No. 130/95, whereby the appellant has been convicted under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and sentenced to undergo R.I. for one year.
2. The brief facts of the prosecution case, is that, the Central Crime Squad, Raipur had received an information that the accused has kept contraband *ganja* in his possession, whereby, thereafter, it was informed to DSP, Mr. R. K. Mishra by wireless and the raid party along with DSP went to the house of the accused. After reaching the house of the accused, he was informed about the information that he has kept *ganja* in his house and thereafter, the house was raided and 6.500 Kg. *ganja* was also recovered from the possession & control of the accused. After the recovery of such contraband *ganja* it was sent to FSL and in turn, the report was received from FSL that the contraband which was sent for examination is *ganja* and after investigation charge-sheet under Section 20 of NDPS Act was filed.

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3. The learned counsel for the appellant submits that there has been non-compliance of Section 42 of the NDPS Act, as the information was not sent to higher official before the house of the appellant was raided. He further submits that the independent witnesses have not supported the case of the prosecution and therefore, simply on the statement of Investigating Officer, conviction could not be made and which is bad in law.
4. I have heard the learned Counsels for both the parties at length and perused the records.
5. The prosecution in this case has examined Investigating Officer, Ram Niranjana Pandey as PW-4. He has stated that in November, 1995, he was working at Central Crime Squad, Raipur. He has further stated on 19.11.1995, while he was discharging his duties, he received an information that the accused, Sheikhu Khan has kept *ganja* in his house at Idgahbhata, Raipur. On receiving such information, he had sent, notice of it, to DSP, Mr. R. K. Mishra by wireless and thereafter, the DSP himself had come down. He along with staff had went to the house of the appellant/accused. He has further stated that the witnesses were also informed to keep themselves present in the place of incident and after reaching there, they found the accused was sleeping in the house. Subsequent to it, the accused was informed by Ex./P-4 and Panchnama was prepared which was signed by this witness and also by DSP. Subsequent to it, the house of the accused was raided and on such raid, the contraband *ganja* was found in a jute bag and seizure memo Ex./P-3 was prepared. After recovery of such *ganja*, the samples of *ganja* was also taken out, which was sealed and subsequent to it, it was weighed in front of the other witnesses & recorded by Ex./P-5. After having found *ganja*, it was tested by primary verification & by smell which was recorded in Ex./P-6 and thereafter, the *ganja* was seized from the possession of the accused. The witness has further stated that he had given the notice, to be present, to the witnesses by Ex./P-7 and the statement of

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the witnesses were also recorded. After such recovery, the report was made by Ex./P-1 and subsequent to it sealed *ganja* was sent for FSL report by Ex./P-9 which was received by FSL by Ex./P-10.

6. This witness was cross-examined in detail. In the cross-examination, nothing has come out to rebut the statement made as also the process of recovery which was conducted by this witness. Instead he has explained the fact that he had sent the report, after receiving the information that the accused has kept *ganja* to the DSP and on receipt of such information the DSP himself had come down. Under these circumstances there had been a sufficient compliance was made of Section 42 of the NDPS Act.
7. The other independent witnesses have been turned hostile. They have not supported the case of the prosecution. The Hon'ble Supreme Court in ***Sumit Tomar Vs. State of Punjab, (2013) 1 SCC 395*** it has been laid down by the Hon'ble Supreme Court in para 10 as under:

"....., we hold that though it is desirable to examine an independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statements cannot be faulted with. On the other hand, the procedure adopted by the prosecution is acceptable and permissible, particularly, in respect of the offences under the NDPS Act. Accordingly, we reject both the contentions."

8. In this case, though the independent witnesses have not supported the case of the prosecution, the accused has failed to explain that any animosity was existing with that of the accused & the Investigating Officer. Therefore, in absence of that, only on the basis of that the independent witnesses have not supported the case, it cannot be held that the accused has been falsely implicated in the case. The prosecution in this case has proved that after the seizure, when it was sent to FSL, the FSL by its report dated 21.11.1995 has proved the sealed packet, which were sent were containing *ganja*.

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9. Therefore, considering the entire evidence on record and close scrutiny of the evidence made, I come to a conclusion that the learned Court below has not committed any illegality by holding the accused guilty of the offence. It is also note worthy to add that the appellant was in jail for 9 months and 12 days during the period of trial and further was in jail for about 3 months after filing of appeal. So prima-facie it appears that the appellant has already completed sentence of one year for which he was sentenced.
10. In view of the foregoing discussions, I am of the considered view that the appeal has no merits and accordingly, it is dismissed.

Sd/-
Goutam Bhaduri
Judge