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Division Bench

HON'BLE D.B.

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR**  
**CRIMINAL APPEAL NO. 323 / 2011**

**APPELLANT:**

(IN JAIL)

J. Anil Kumar, S/o Shri J. B. N. Rao,  
Aged about 27 years, Caste- Telgu,  
Profession - Driver, R/o Santosh Nagar,  
Boriguma, Thana Boriguma, District Koraput,  
Orissa

P.R. No. 2367/11  
Presented by Shri *State W. Dev. Jan*  
Dated 20.4.11

**VERSUS**

**RESPONDENT:**

State of Chhattisgarh,  
Through Police Station Kondagaon,  
District Bastar (C.G.)

**CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF**  
**CRIMINAL PROCEDURE 1973.**



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**DB : Hon'ble Shri Justice T.P. Sharma &  
Hon'ble Shri Justice C.B.Bajpai**

**Criminal Appeal No.323 of 2011**

**APPELLANT:**

J.Anil Kumar

Versus

**RESPONDENT:**

State of Chhattisgarh

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

**Present:**

Shri Alok Dewangan, Advocate for the appellant.

Shri Roshan Dubey, Panel Lawyer for the State/respondent.

**JUDGMENT**

(13-01-2015)

**Per C.B.Bajpai, J**

1. Challenge in this criminal appeal is to the judgment of conviction and order of sentence dated 06-04-2011 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Bastar at Jagdalpur in Special Case No.10/2009, whereby & whereunder the learned Special Judge after holding the appellant guilty for illegal possession of 202 kg. contraband article ganja, convicted him under Section 20(b)(ii)(C) of the NDPS Act and sentenced the appellant rigorous imprisonment for 14 years and fine of Rs.1,00,000/-, in default, additional rigorous imprisonment for 3 years.
2. The conviction is impugned on the ground that without their being any iota of evidence, the court below has convicted and sentenced the appellant as aforesaid mentioned and thereby committed illegality.
3. As per case of prosecution, on 16-03-2009, Town Inspector Mohsin Khan (PW-7), In-charge, P.S. Kondagaon received information from informant that a black four wheeler Tavera bearing registration No. OR 24/2222 is carrying illegal contraband article ganja. He recorded this information on rojnamcha sanha No.6



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at Ex.-P/1 in presence of two panch witnesses. Thereafter, he informed Sub-Divisional Officer (Police), Kondagaon for the same but on account of delay in obtaining the search warrant he along with police staff and witnesses proceeded in Govt. vehicle CG 03/1144 towards Raipur Naka and prepared Ex.-P/2 for the same. Sanha is Ex.-P/22C. Preparation of Mukhbir Suchna Panchnama was recorded in sanha No.7 vide Ex.-P/23C. The information sent to SDO(P), Kondagaon was recorded in sanha No.8 vide Ex.-P/24C. The information for the transportation of ganja was prepared vide Ex.-P/18. The Investigating Officer also informed the SDO(P) over telephone before proceeding to the spot. He lodged the information regarding proceeding towards the spot along with police staff and witness at rojnamcha sanha No.9 vide Ex.-P/25C. At about 12.00 noon, he noticed a black Tavera bearing registration No. OR 24/2222 coming from Jagdalpur. He gave signal to the driver for stopping the vehicle, the driver enhanced the speed and when the witness followed the Tavera towards Raipur after aheading some distance, the driver of the said Tavera stopped the vehicle near the road and attempted to escape from the spot. The Investigating Officer and the other police staff caught hold of the driver, he was the appellant who gave his name and address upon asking. At about 12.45 p.m., he gave notice to the appellant under Section 91 of the Code of Criminal Procedure, 1973 (in brevity 'the Code') and informed him regarding the information received from the informant and also asked him whether he was having any papers regarding the substance being transported in the vehicle. Upon receipt of notice Ex.-P/3, the appellant gave in written that he is not having any appropriate document for the same and put sign over Ex.-P/3. Thereafter, the Investigating Officer gave notice to the appellant under Section 50 of the NDPS Act and the appellant was intimated his legal right that he may be searched before by a gazetted officer or a Magistrate or if he wishes the search can be conducted by the said I.O. The appellant after taking notice Ex.-P/4 gave his consent that he is ready to be searched from the I.O.

present on the spot. Thereafter, the appellant made search of the Investigating Officer and other police party and witnesses. No objectionable substance has been found in the said search. The I.O. prepared panchnama Ex.-P/5. Thereafter, the Investigating Officer made search of body of the appellant and also of Tavera vehical where the driving licence, RC book, insurance and 16 bags having ganja like contraband article were found. The panchnama (Ex.-P/6) was prepared. Thereafter, panchnama regarding recovery of 16 bags of ganja was prepared vide Ex.-P/7. The said substance was physically examined and found as ganja. The physical examination was conducted before the witnesses and the panchnama (Ex.-P/8) was prepared. Thereafter, physical verification of the measurement apparatus was conducted and panchnama (Ex.-P/9) was prepared. Then, 16 bags contraband article were weighed and it was found total 202 kg. and the weighment panchnama (Ex.-P/10) was prepared. The ganja recovered were mixed and the panchnama was prepared vide Ex.-P/11. Thereafter, Mohsin Khan (PW-7), the Investigating Officer, seized the said vehicle Tavera along with its RC book, insurance and licence and 202 kg. of ganja including the samples taken from the ganja and also 3 number plates found in the vehicle and prepared the seizure memo Ex.-P/12. The ganja samples and other articles prepared were sealed and impression of the seal was affixed before the witnesses and the seizure memo was duly prepared. Thereafter, impression of the seal was taken in the panchnama (Ex.-P/13). Sample panchnama (Ex.-P/14) was prepared. The appellant was duly arrested vide arrest memo Ex.-P/15. The statements of the witnesses were recorded under Section 161 of the Code. Thereafter, the Investigating Officer returned along with the appellant, seized article, vehicle, witnesses and the police staff and recorded his return in sanha No.17 (Ex.-P/26C) and thereafter he deposited the entire seized material in the Malkhana and lodged the First Information Report (Ex.-P/27). The information regarding arrest of the appellant was intimated through mobile to wife of the appellant and it was

mentioned in the Ex.-P/27. Thereafter, he prepared the complete report regarding arrest and seizure under the relevant provisions of Section 57 of the NDPS Act and sent it to his immediate official superior, Superintendent of Police, Bastar vide Ex.-P/19. He also sent a copy of this to SDO(P), Kondagaon. During investigation, he sent the samples A-1 to P-1 to Forensic Science Laboratory, Raipur with the draft Ex.-P/28 which was received in the laboratory vide receipt memo Ex.-P/29. The Forensic Science Laboratory confirmed presence of ganja vide its report Ex.-P/30. After completion of the investigation, charge sheet was filed before the Special Judge and the learned Special Judge conducted the trial.

4. In order to prove the guilt of the appellant, the prosecution examined as many as 8 witnesses. The accused was examined under Section 313 of the Code in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

5. After affording opportunity of hearing to the parties, the learned Special Judge has convicted and sentenced the appellant as aforementioned.

6. We have heard learned counsel for the parties and perused the judgment impugned and record of the trial court.

7. Learned counsel for the appellant submitted that the appellant is innocent, he was traveling in a bus and at Kondagaon he got down from the bus for urination near a dhaba where he was caught hold and police prepared a false case against him. He is not driver of the seized vehicle, he has nothing to do with the seized vehicle and the seized contraband substance ganja. He is falsely implicated. Learned counsel for the appellant further submitted that bus ticket and the other belongings were though forcibly taken by police authority but it was not shown in the seizure memo just to falsely implicate the appellant. It is further argued that panch witnesses Umesh Thakur (PW-1) and Vijay Kumar Sahu (PW-5) did not support the prosecution's story thereby the evidence of the Investigating Officer is not corroborated by the panch witnesses and thereby the prosecution is failed to

prove the guilt against the appellant by non-corroboration of the panch witnesses. It is further submitted that the person who had taken the weight is also turned hostile, with this there are reasonable suspicion regarding the quantity of the ganja. It is further submitted that mandatory provisions are not complied, hence, the appellant may be given benefit of doubt and he be acquitted from the charges framed against him.

8. On the other hand, learned counsel for the State/respondent while supporting the judgment of conviction and sentence opposed the appeal and submitted that there is no scope for interference in the judgment of conviction and sentence. The appellant while applying for bail under Section 439 of the Code by filing the M.C.C. No.1241/2009 submitted before this Court that the appellant was merely a driver of the vehicle from which the contraband substance was seized, he was not owner of the vehicle, the owner of the vehicle ran away from the spot. By mentioning these facts the appellant himself admitted that he was driving the vehicle at the relevant point of time when the appellant was asked to stop and the search was made by police party. Learned State counsel also submitted that in the statement under Section 313 of the Code, the appellant deposed his occupation as driver, also in the seizure memo Ex.-P/12 the appellant's driving licence was seized along with the contraband article and as appeared in the entire investigation it was the appellant who was driving the said vehicle and he was caught hold by police party when he was attempting to run away from the spot; and there was no other person sitting in the said vehicle; it all goes to show that it is not correct that the appellant was a passenger traveling in some other bus and at the time of incident he got down from the bus for urination and he was falsely implicated. The learned State counsel further submitted that all the mandatory provisions were complied with. There is no reason to falsely implicate the appellant; he was found in the illegal possession of 202 kg. of contraband article

ganja for which he was rightly tried and convicted. Hence, the appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.

10. The said certified copy of the bail order bearing M.Cr.C.No.1241 order dated 13-07-2009 is very much included in the record of the trial court. Upon bare perusal it goes to show that on behalf of the appellant it was argued that he was a driver of the vehicle from which the contraband was seized thereby it is admitted that the appellant has taken a stand at the time of hearing on bail petition that it was he who was driving the said Tavera vehicle. For the present defence that he was a passenger in a bus and falsely implicated by police no suggestions or questions were asked, for the same no evidence was adduced on behalf of the defence and also there is no reason as to why the appellant is falsely implicated; he belongs to State of Orissa, vehicle seized also belongs to Orissa State, there was no enmity with police or other facts involved to show that the Investigating Officer falsely implicated a passenger of a bus in the present case; hence, the defence taken by the appellant seems afterthought since a different defence was taken while arguing the bail petition before this Court.

11. On close scrutiny of the evidence of Investigating Officer Mohsin Khan (PW-7), he was cross-examined at length but he remained very firm and nothing could be elicited to discredit this witness. So far as non-corroboration of the panch witnesses are concerned, as per settled law, in a case of NDPS Act if panch witnesses do not corroborate the prosecution story and if the statement of the Investigating Officer is found to be truthful, trustworthy and admissible, then it must be valued on its own strength and on the basis of the statement of the Investigating Officer even in presence of non-corroboration to the same by panch witnesses accused can be very well convicted. Upon close scrutiny, we do not see

any reason to discredit the statement of the Investigating Officer Mohsin Khan (PW-7) and his statement seems to be truthful, admissible and trustworthy.

12. As per the entire evidence, mandatory provisions were complied with by the Investigating Officer by informing the rights of the appellant that he can be searched before a Gazetted Officer or Magistrate or if he wishes by the Investigating Officer himself, the appellant agreed to be searched by the Investigating Officer itself; in all the documents prepared, the appellant made his signature and also marked the word "received" and other noting in Hindi and English, it goes to show that the appellant was well aware of the complete process and thereby it eliminates the element of doubt. The contraband article was duly seized, sealed and sent to Forensic Science Laboratory for confirmation and the presence of ganja vide report Ex.-P/30 was found positive in the samples. The samples were received in the laboratory alongwith intact seal and impression of the seal. The samples were sent without delay for examination, it also eliminates any doubt. Malkhana Moharrir Ravish Kenwat (PW-3) duly received the entire property including 202 kg. of ganja including the samples and other articles in sealed condition. He made the entry in the Malkhana Register Ex.-P/16C, it also goes to show that the property were received in duly sealed condition along with the samples and during the course of investigation, the samples were sent for chemical analysis. The superior officers were informed regarding the information received from the informant. On account of delay in getting the search warrant as provided under the authority of law the Investigating Officer proceeded for further enquiry. After complete investigation, he prepared complete proceeding reports regarding arrest and seizure as required under Section 57 of the NDPS Act and within stipulated time he sent those reports to his officers superior i.e. SDO(P), Kondagaon and Superintendent of Police, Bastar at Jagdalpur, it goes to show that all the required mandatory provisions are duly complied with and no doubt can be assigned over the complete investigation and enquiry. The seized ganja was

duly produced at the time of examination-in-chief and cross-examination at the time of recording of evidence of Investigating Officer Mohsin Khan (PW-7) before the Court. The weight of the contraband article was properly taken and the relevant panchnama was prepared; merely on the basis of the non-corroboration of the person who weighed the ganja, no doubt can be raised for its weightment and connected proceedings.

13. Upon minute examination of the evidence, we are of the considered view that the prosecution duly proved its case beyond all probable doubt that the appellant was in illegal possession of contraband article 202 kg. of ganja at the time of incident and for which the Investigating Officer conducted the proper and complete investigation and proved the case of the prosecution before the trial Court. There is no reason to disbelieve the evidence of the Investigating Officer and other connected witnesses and also the report received from the FSL.

14. So far as the judgment of conviction is concerned, we do not find any infirmity or illegality as to give any benefit of doubt to the appellant. The prosecution duly proved its case before the trial Court. Therefore, there is no scope for any interference in the judgment of conviction.

15. So far as the quantum of sentence awarded by the trial Court to the appellant is concerned, the appellant was the first offender, no other previous history regarding transportation of illicit ganja was shown in the charge sheet. At the time of incident, he was a man of 24 years. Looking to the entire facts and circumstances, we are of the view that the sentence part requires interference and it would be proper to sentence the appellant for the minimum sentence prescribed by the legislature.

16. Consequently, the appeal filed by the appellant is partly allowed. Conviction of the appellant awarded by the trial Court is hereby maintained. However, the sentence awarded to the appellant is hereby modified and instead of rigorous imprisonment of 14 years, the appellant is sentenced to undergo rigorous



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imprisonment for 10 years. The fine sentence awarded by the trial Court being the minimum i.e. Rs.100000/- is also hereby affirmed, in default of payment of fine, the appellant shall have to undergo additional rigorous imprisonment for 2 years.

Sd/-  
T.P. Sharma  
Judge

Sd/-  
Chandra Bhushan Bajpai  
Judge

Aadil

