

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 186 of 2008

- Bhagwan Lal Sahu, S/o Pyari Ram Sahu, aged about 35 years, Occupation Cultivator, R/o Village Tipani, PS Bhakhara, Distt. Dhamtari (CG)

---- Appellant

(In Jail)

Versus

- State Of Chhattisgarh, through PS Arjuni, Distt. Dhamtari (CG)

---- Respondent

For appellant : Shri CR Sahu, Advocate.

For Respondent/State : Shri Arvind Dubey, Panel Laywer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

29/03/2016

This appeal arises out of the judgment of conviction and order of sentence dated 14.1.2008 passed by the Special Judge (N.D.P.S. Act), Dhamtari, in Special Criminal Case No.31/2007, convicting the accused/appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing him to undergo RI for 7 years and to pay a fine of Rs.70,000/- with default stipulation.

02. As per prosecution case, on 8.2.2007 at about 4 pm K.B. Nage, Sub Inspector, Crime Squad, received a secret information (Ex.P/3) that one person standing towards Korra road carrying Ganja in a fertilizer bag is trying to sell the same. The said information was reduced to writing in Rojnamchasanha vide Ex.P/1 and forwarded to

the superior officer Dy.S.P. vide Ex.P/4. The police party along with witnesses went to the spot, apprehended the accused, gave him notice under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police vide Ex.P/5. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P/6 and nothing was found. On search of the fertilizer bag which the appellant was carrying Ganja like substance was recovered vide Ex.P/7 and on being examined by smelling and burning, it was found to be Ganja vide Ex.P/8. On weighment being done of the contraband it was found to be 12.500 kg vide Ex.P/9. Two samples, each of 50 gms, were drawn from the said contraband and seizure memo Ex.P/10 was prepared, the samples were duly sealed and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P/13, the accused was arrested vide Ex.P/11, intimation of his arrest was sent to his near relative vide Ex.P/12 and Dehati Nalishi Ex.P/14 was prepared on the spot. Intimation of the entire proceedings was forwarded to Dy.S.P. After reaching police station, FIR (Ex.P/17) was registered against the accused/appellant under Section 20(b) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 9.2.2007 with intact seal and report of FSL is Ex.P/22, which confirms the seized contraband to be Ganja. After investigation, charge sheet was filed against the accused/appellant under Section 20(b) of the NDPS Act. The trial Court framed charge under Section 20(b)(ii)(B) of the NDPS Act against him.

03. So as to hold the accused/appellant guilty, the prosecution examined 5 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that the independent seizure witness has not supported the prosecution case.
- that there is total non-compliance of mandatory provisions of Sections 50 and 42 of NDPS Act.
- that Malkhana register has not been produced by the prosecution before the trial Court.
- that considering the quantity of contraband seized from the appellant, the sentence of 7 years' RI appears to be on higher side and therefore, the same may be reduced suitably.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

- that all the mandatory provisions of Sections 50 and 42 of NDPS Act have been duly complied with by the prosecution.

- even if Malkhana register has not been produced in the Court, it will not make any difference because after drawing samples the same were sent to FSL without undue delay just on the next day after affixing seal and sample of the seal also, and FSL received the samples intact. In these circumstances, it is apparent that there was no opportunity for the officer to tamper with the impression of seal.
- that the question of reduction of sentence in the present case does not arise because the appellant is a habitual offender and in the past, he has been convicted and sentenced for the similar offence in Criminal Case No.15/07 vide judgment dated 20.6.2007.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 KB Nage, investigating officer, while supporting the prosecution case has stated that on 8.2.2007 on receiving secret information that one person is standing at Korra road carrying a white coloured fertilizer bag containing Ganja for the purpose of sell, he reduced the said information in writing in Rojnamchasanha vide Ex.P/1. Thereafter, he summoned two independent witnesses namely Murad Khan and Farid Khan vide Ex.P/2 and prepared secret information panchaname vide Ex.P/3. The secret information was telephonically conveyed to the superior officers and the same was also forwarded in writing to Dy.S.P., Dhamtari vide Ex. P/4. Thereafter, he along with staff and the witnesses proceeded to the spot where they

found the accused standing there holding a white coloured fertilizer bag. On being enquired he disclosed his name as Bhagvanlal, son of Pyariram Sahu. He was given notice under Section 50 of the Act (Ex.P/5) and informed about his legal rights to be searched either by any Gazetted Officer or Magistrate or himself. This notice bears the signatures of witnesses Murad Khan and Farid Khan also. On being so informed, the accused consented to be searched by him. Thereafter, the police staff, witnesses and himself were got searched by the appellant vide Ex.P/6, which bears the signatures of the appellant and the persons searched, however, nothing objectionable was recovered by such search. Then on search being made of the white coloured bag carried by the appellant, Ganja like substance was recovered vide Ex.P/7. On being examined through smelling, tasting and burning, it was found to be Ganja and identification panchanama of the contraband was accordingly prepared vide Ex.P/8. These documents (Ex.P/7 and P/8) bear the signatures of the appellants, both the witnesses and himself. On contraband being weighed, it was found to be 1.2500 kg vide weighment panchanama Ex.P/9 and it bears signatures of the appellant, both the witnesses and Constable Praveen Shukla, who did weighment. Thereafter, two samples each of 50 gms were drawn from it and the same were sealed. Both the samples and the bag containing Ganja were sealed. Specimen of the seal was prepared vide Ex.P/10 which bears signatures of the appellant, both the witnesses and himself. A copy of the said seizure memo was also given to the accused/appellant. Thereafter, the accused/appellant was arrested on the spot vide Ex.P/11 and information of his arrest was sent to his near relative vide Ex.P/12. Spot map was prepared vide

Ex.P/13. He has stated that on the spot itself he recorded Dehati Nalishi Ex.P/14 and statements of the witnesses Farid Khan and Murad Khan. After conducting the aforesaid proceedings, he had handed over the Dehati Nalishi, the documents of the entire proceedings, sealed bag of the contraband seized and both the samples to Constable Praveen Shukal (PW-2) and directed him to send the contraband to FSL for chemical examination. Thereafter, he proceeded on VIP duty to Rajim and on 10.2.2007 recorded the entire proceedings conducted by him in Rojnamchasanha Ex.P/15.

In para-9 he has stated that entire proceedings were reduced to writing by him on 8.2.2007, which were sent to Dy.S.P. on 9.2.2007 by Head Constable Chironjilal vide Ex.P/16. In cross-examination, he has denied all the adverse suggestions put to him by the defence and duly supported the prosecution case.

09. PW-2 Praveen Shukla, Head Constable, was a member of the raiding party. He has stated that after receipt of secret information, he along with KB Nage (PW-1) and other staff had gone to the spot, personal search of the police party was made by the appellant and thereafter, on search of the bag carried by the appellant 12.50 kg Ganja was recovered. Defence has not been able to elicit anything from him to make the prosecution case doubtful. He has also supported the prosecution case.

10. PW-3 Ved Prakash Sahu, Patwari, prepared spot map Ex.P/20. PW-4 ML Pandey, Dy.S.P. has proved numbered FIR (Ex.P/17). PW-5 Murad Khan, independent witness of raiding party has though not

supported the prosecution case but has admitted his signatures on all the documents. In para-9 of his cross-examination he has denied the suggestion that Ganja was not seized from the accused/appellant.

11. Close scrutiny of the evidence makes it clear that on 8.2.2007 PW-1 K.B. Nage, after receiving a secret information that one person is standing at Korra road carrying Ganja in a fertilizer bag and is trying to sell the same, reduced it to writing in Rojnamchasanha and forwarded the information to the superior officer. Thereafter, he along with other staff and two independent witnesses rushed to the spot, apprehended the accused, gave him notice under Section 50 of the NDPS Act and made him aware of his legal rights and on the consent of the appellant, his search was made by him. Prior to his search, personal search of the police party and the witnesses was also made by the appellant, on which nothing was found from their possession, however, on search of the fertilizer bag carried by the appellant Ganja like substance was recovered, which on being examined by smelling and burning was found to be Ganja. After weighment, the contraband was found to be 12.500 kg. Thereafter, two samples, each of 50 gms, were drawn from the said contraband, seizure memo was prepared, the samples were duly sealed and specimen of seal was affixed on the seizure memo, intimation of the entire proceedings was forwarded to Dy.S.P., contraband including the samples were deposited in Malkhana, samples were sent to FSL for chemical examination with intact seal and as per report of FSL it was confirmed to be Ganja. Thus, from the documents and the unrebutted evidence of PW-1, PW-2 & PW-4, compliance of Section 42 and 50 of the Act is proved. Though

independent witness PW-5 Murad Khan has not supported the prosecution case, but he has admitted his signatures on all the documents and further admitted that Ganja was seized from the possession of the accused/appellant.

12. As regards non-production of Malkhana register before the trial Court, as per evidence of PW-1 and PW-2 after drawing samples from the seized contraband, the same were deposited in Malkhana and the samples in sealed condition were sent for chemical examination to FSL without any undue delay just on the next day and as per FSL receipt, the samples were received with seal intact. Thus, it is apparent that there was no occasion for tampering with the seal or the contraband sent to FSL. This apart, defence has not put any such suggestions to these witnesses. In view of all this, this Court is of the opinion that non-production of Malkhana register in the Court is in no way fatal to the prosecution case and the appellant is not entitled to have any benefit of this lacuna.

13. So far as reduction of sentence is concerned, considering the quantity of the contraband, in particular the fact that this is the repeated offence of the appellant, earlier also he was convicted and sentenced for such offence, I do not consider present to be a fit case to reduce the sentence imposed on him by the trial Court.

14. For the reasons stated above, this Court is of the considered opinion that conviction of the appellant under Section 20(b)(ii)(B) of the Act and sentenced imposed thereunder are based on proper appreciation of the evidence, calling for no interference. The appeal

being without any substance is liable to be dismissed and is,
accordingly, dismissed.

Sd/

(Pritinker Diwaker)

Judge

Khan