

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 769 of 2007

- Amrendra Singh, S/o Late Manejar Singh, aged about 37 years, R/o Village Rajvahi Colony, Saraiya Ward No.1, Gopalganj, Police Station and District Gopalganj (Bihar)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, through District Magistrate, Ambikapur, Distt. Surguja (CG)

---- Respondent

For appellant : Smt. Indira Tripathi, Advocate.

For Respondent/State : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

03/03/2016

This appeal arises out of the judgment of conviction and order of sentence dated 30.8.2007 passed by the Special Judge, Surguja (Ambikapur) in Special Criminal Case No. 06/2007, convicting the accused/appellant under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act and sentencing him to undergo RI for 2 years and to pay a fine of Rs.10,000/- with default stipulation.

02. Facts of the case in brief are that on 25.11.2006 upon receiving a secret information by PW-1 Anup Ekka that one person is roaming around Gandhi Chowk, Ambikapur near Jaiswal Hotel for selling Ganja, the said information was reduced to writing vide Ex.P/1, copy of which was forwarded to City Superintendent of Police vide Ex.P/24 and P/25.

Thereafter, the police party proceeded to the spot accompanied by Panch witnesses namely PW-4 Gurucharan Singh and Sanjay Das; the appellant was apprehended, was given notice under Section 50 vide Ex.P/3; personal search of the witnesses and the police party was made vide Ex.P/4 & P/5 respectively. After obtaining consent of the appellant, his personal search was made vide Ex.P/6; identification panchanama was prepared vide Ex.P/7; the appellant was served with a notice to show any document regarding contraband; weighment Panchanama was made vide Ex.P/11, on weighment the contraband was found to be 6.075 kg kept in a bag wrapped in polythene, it was made homogeneous vide Ex.P/10; one sample of 250 gm of the contraband was made vide Ex.P/12; seal Panchanama was prepared Ex.P/13; seizure Ex.P/14 was effected; the appellant was arrested vide Ex.P/15; Dehati Nalishi Ex.P/16 was recorded and thereafter, FIR Ex.P/17 was registered under Section 20(b) of the Special Act; intimation of the entire proceedings was sent to CSP vide Ex.P/19; the contraband was sent to FSL vide Ex.P/20; receipt of FSL is Ex.P/21; receipt of deposit in Malkhana is Ex.P/22 and report of FSL is Ex.P/23 which confirms the contraband to be Ganja. After completion of investigation, charge sheet was filed on 1.2.2007 under Section 20(b) of the Special Act against the appellant and charge under Section 20(b)(ii)(B) of the Special Act was framed.

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 while referring to the statement of PW-1 Anup Ekka submits that there are major lacunas in the investigation and this has been admitted by PW-1. She submits that independent witnesses PW-4 Gurucharan and PW-5 Rakesh Khatik have not supported the prosecution case whereas other witness has not been examined. Lastly she submits that the contraband so sealed was not deposited in the Malkhana and that FSL report does not confirm that the seized contraband was Ganja.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that right from the beginning due procedure has been followed by the police authorities as contemplated in the Special Act and if PW-1 has stated anything contrary to the record, the same will be of no help to the appellant. It has been argued that the appellant is a habitual offender, after his release on bail in Cr.A.No.818/2001, he repeated this offence and thus no leniency be shown to him. He further submits that all the mandatory provisions of Section 42, 55 and 57 of the Special Act have been duly complied with by the prosecution.

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

08. PW-1 Anup Ekka, investigating officer, while supporting the prosecution case has stated that upon receipt of secret information that a person is roaming around near Gandhi Chowk, Ambikapur for selling Ganja, he recorded the said information vide Ex.P/1, forwarded information of the same to CSP vide Ex.P/2 and then along with the witnesses and the staff proceeded to the place of occurrence and completed all the formalities as required under the law. He has described as to the manner in which the formalities were completed by him. PW-2 Bhupesh Singh made compliance of Section 42 of the Special Act. PW-3 Sanjay Kumar Pandey, Reader in the office of CSP, has proved receipt of information Ex.P/1 and P/2. PW-4 Gurucharan Singh has though admitted his signature on the documents but denied the contents thereof. He has been declared hostile. PW-5 Rakesh Khatik has also admitted his signature on the documents but denied their contents and thus been declared hostile.

09. Close scrutiny of the evidence makes it clear that on 25.11.2006 on the basis of secret information when the police party reached the place of occurrence, the appellant was found there carrying Ganja and on being served with a notice to show document for possession thereof, he failed to give any such document. Though witnesses to seizure and other documents (PW-4 and PW-5) have turned hostile but they have admitted their signatures on the documents. Even otherwise, from the statement of the investigating officer PW-1 Anup Ekka, it is evident that after receipt of secret information, he reduced the same to writing, forwarded a copy thereof to the office of CSP, completed all the mandatory proceedings as contemplated under the Special Act and

then intimated about the same in writing to CSP. Evidence of the investigating officer finds due support from the evidence of PW-2 Bhupesh Singh and R. Sanjay Pandey. Thus, from the documents and the evidence of the aforesaid witnesses, compliance of Section 42 and 50 of the Special Act is proved. As per FSL report Ex.P/23 the contraband was found to be Ganja. Though there are certain lacuna in the investigation, as it appears from the statement of the investigating officer, but in the totality of facts and circumstances of the case and the documents available on record, the same are not so significant as to make the entire investigation doubtful. Conduct of the appellant also add to the gravity of the offence as after his release on bail in another appeal i.e. Cr.A.No.769/07 involving the same offence, he repeated the offence and therefore, he deserves no leniency at all.

10. For the reasons stated above, this Court finds no substance in this appeal, the same is liable to be dismissed and is dismissed as such. As per record, the appellant is out of jail, therefore, he is directed to be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)

Judge

Khan