

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 129 of 2011

- Nand Kumar S/o Narad Ram Sahu Aged About 40 Years Occupation Agriculture R/o Village Mundera, Police Station Gunderdehi District Durg Chhattisgarh.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Station House Officer, Gunderdehi, Distt. Durg Chhattisgarh.

---- Respondent

For appellant : Smt. Indira Tripathi, Advocate.
For Respondent/State : Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

18/04/2016

This appeal arises out of the judgment of conviction and order of sentence dated 14.1.2011 passed by the Special Judge (NDPS Act), Durg in NDPS Special Case No.10/2007, convicting the accused/appellant under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act and sentencing him to undergo RI for 10 years and to pay a fine of Rs.1 lac with default stipulation.

02. Facts of the case in brief are that on 16.6.2007 secret information was received by PW-10 IR Sahu, Station House Officer, Police Station Gunderdehi, Distt. Durg, that the accused/appellant is in possession of Ganja, which he has kept in his house. The said information was reduced in writing and forwarded to the superior officer vide Ex.P/11.

The police party along with independent witnesses reached the place of occurrence, apprised the appellant about the suspicion that he is having Ganja in his house and further, made him aware of his legal right about the search, on which the appellant consented for search by PW-10 IR Sahu vide Ex.P/1. Personal search of PW-10 and the accompanying staff was first made by the appellant in presence of the witnesses, however, nothing objectionable was recovered from their possession vide Ex.P/2. Thereafter, on search being made of the appellant's house and shop, from Room No.4, 18 gunny bags containing Ganja were recovered, which was identified by the witnesses through tasting, smelling etc. and accordingly, search and identification panchanama was prepared vide Ex.P/3. On weighment it was found that each of the gunny bags contained 30 kg Ganja and as such, total 5 quintal 40 kg of Ganja was recovered from 18 bags. Two samples, each of 25 gm, from each bag was drawn in presence of witnesses and weighment panchanama Ex.P/4 was prepared. The samples and the remaining Ganja were duly sealed in presence of witnesses and seizure memo Ex.P/6 was prepared. Spot map Ex.P/9 was prepared by the investigating officer. After reaching police station, FIR (Ex.P/16) was registered. The seized Ganja was handed over to Malkhana Muharrir, statements of the witnesses were recorded and the accused/appellant was arrested. The samples were sent to FSL for examination and vide FSL report Ex.P/21 the contraband was found to be Ganja. During investigation, on the basis of suspicion Murlidhar, Balram @ Ballu and Girvar Sahu were also arrested in this case. After completing all the necessarily formalities, charge sheet was filed against the accused persons and thereafter, the trial Court framed

charge under Section 20(b)(ii)(C) of the NDPS Act against them.

03. So as to hold the accused persons guilty, the prosecution examined 12 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them 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 while acquitting other three co-accused of the charge, convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

- that the accused/appellant has been falsely implicated on account of village politics.
- that the independent witnesses have not supported the prosecution case.
- that secret information was not forwarded to the superior officer as per requirement of the Act.
- that the prosecution has failed to prove that the contraband was seized from the exclusive possession of the appellant as there is no document to show that the house in question belongs to the appellant.

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 the NDPS Act have been followed.
- that before effecting seizure, notice under Section 91 of Cr.P.C. was given to the appellant asking him to explain whether he has any document to justify possession of the Ganja seized from his house, to which the appellant failed to produce any such document and also did not take the defence that he is not owner of the house in question.
- that while cross-examining the investigating officer in para-24, it has been admitted by the appellant that as the house in question belongs to him, he has been implicated in this case. Similarly, from perusal of cross-examination of PW-8, it appears that the house and shop in question belong to the appellant. Thus, indirectly it has been admitted by the appellant that he is owner of the house and shop in question.

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

08. PW-1 Shiv Prasad Sahu, has been declared hostile, however, he has admitted his signature on the documents Ex.P/1 to P/9. PW-2 Neelkanth forwarded the secret information to the superior officer on the instructions of the Station House Officer, P.S. Gunderdehi (PW-10) vide Ex.P/11. PW-3 Chhannudas Manikpuri, Village Kotwar, is witness of seizure of the vehicle vide Ex.P/12. However, he has turned hostile.

PW-4 Rajkumar, the witness of weighment panchanama Ex.P/4, has also turned hostile, but admitted his signature. PW-5 Vijay Mahipal has though turned hostile but admitted his signatures on the documents Ex.P/1 to P/9. PW-6 Jeevanlal, witness to weighment panchanama Ex.P/4 has been declared hostile but admitted his signature. PW-7 Basant Kumar Kashyap, witness of seizure of the vehicle Ex.P/12 has though turned hostile but admitted his signature on the document. PW-8 Ashwani Kumar, an independent witness, has stated that from the shop of the appellant and Virendra, 18 gunny bags containing Ganja were recovered and after weighment, it was found to be 5 quintal 40 kg. He has stated that even photography of the entire proceedings was done. Though this witness was declared hostile on a particular question but while being cross-examined he again admitted the entire prosecution case. PW-9 Ganpat has turned hostile.

09. PW-10 IR Sahu, investigating officer, has stated that during patrolling he received a secret information that the appellant has kept Ganja illegally in his house, the said information was reduced in writing and forwarded to the superior officer vide Ex.P/11. Thereafter, he along with staff and witnesses proceeded to the spot, apprehended accused/appellant, made him aware of his legal rights of search and on his consent, his house and shop were searched and 18 gunny bags containing Ganja like substance were recovered. On being examined through smelling and tasting, it was identified as Ganja and identification memo was accordingly prepared. On weighment, total quantity of the contraband was found to be 5 quintal 40 kg, two samples of 25 gm each were drawn from each bag, the same were

duly sealed. In the seizure memo, impression of the seal was made. After conducting proceedings at the spot, he reached police station, FIR was registered under Crime No.126/07 for offence under Section 20(b) of NDPS Act and the seized articles were deposited in Malkhana. He had sent the samples for examination to FSL and as per FSL report Ex.P/21, the same was confirmed to be Ganja. He has admitted that there are five shops adjacent to the shop of the appellant, all the shops were locked from outside and key of Shops No. 3 & 4 was with the appellant. He has further denied that appellant's shops and house are separate and stated that there are five shops on the front portion of his house. This witness has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 16.6.2007 PW-10 IR Sahu, investigating officer, acting on the secret information proceeded to the place of occurrence accompanied by the staff and witnesses and on search being made of the appellant's shop, recovered total 5 quintal 40 kg of Ganja like substance, which was subsequently confirmed to be Ganja as per FSL report Ex.P/21. Though the independent witnesses have not supported the prosecution case but they have admitted their signatures on the documents. There is no substance in the argument of the appellant that secret information was not forwarded to the superior officer as per requirement of the Act because as per evidence of PW-2 Neelkanth the secret information was forwarded to the superior officer on the instructions of PW-10 vide Ex.P/11. This fact has been further proved by PW-10 in his evidence. Thus, all the mandatory provisions of the Act have been duly followed by the investigating officer while conducting investigation.

11. As regards the argument that the prosecution has failed to prove that the contraband was seized from the exclusive possession of the appellant, no defence was taken by the appellant during trial that the house and shop in question do not belong to him. Even on being noticed under Section 91 of Cr.P.C. before effecting seizure, the appellant did not take this plea. Furthermore, the suggestions put to PW-8 and PW-10 in their cross-examination are itself suggestive of the fact that the appellant was the owner of the house and the adjacent shops from where the contraband was seized.

12. Thus, the findings recorded by the trial Court holding the appellant guilty under Section 20(b)(ii)(C) of NDPS Act are based on proper appreciation of the evidence available on record and there is no scope for any interference by this Court. Accordingly, the appeal being sans merits is liable to be dismissed and it is dismissed as such.

Sd/

(Pritinker Diwaker)

Judge

Khan