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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 60 of 1997

- Vijay Das Manikpuri, aged about 28 years, S/o Bodhandas Manikpuri, R/o Lallu Musalman Ka Makan, Mannu Chowk Ke Pass, Goodiyari, P.S. Ganj, Raipur, M.P., at present R/o Chhunabhatti, P.S. Khamtarai, Raipur (M.P.) (Now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	:	Shri Tarun Dadsena, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

24/11/2016

This appeal arises out of the judgment of conviction and order of sentence dated 18.12.1996 passed by 4th Additional Sessions Judge and Special Judge, Raipur in Special Criminal Case No.86/1994, convicting the accused/appellant under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing him to undergo RI for 5 years and to pay a fine of Rs.5,000/- with default stipulation.

02. Facts of the case in brief are that on 2.4.1994 at 4.30 am secret information was received by LK Pandey (PW-4) Sub Inspector, P.S. Gariyaband that ganja is being transported in the bus of Orissa State Transport Corporation. The police team immediately rushed to forest barrier, Gariyaband and stopped the bus bearing registration No.O.R.-



08-2213. During search the appellant was found travelling in the bus along with suitcase. He was asked to get down from the bus and after taking his consent, the suitcase was opened and 8 kg of ganja was found in the same. Sample of the ganja was drawn and sealed. FIR (Ex.P/6) was registered on 2.4.1994. The sample of the contraband was sent for chemical examination to FSL on 9.5.1994 vide Ex.P/7 and the FSL report dated 30.5.1994 is Ex.P/10 which confirmed the contraband to be ganja. After completing investigation, charge sheet was filed against the appellant under Section 20 of the Act and accordingly, charge was framed by the trial Court.

03. So as to hold the accused/appellant guilty, the prosecution examined 4 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 there is total non-compliance of Sections 42, 55 and 57 of the Act;
- that there is no evidence on record to show that the sample was drawn and sealed in accordance with law or that weightment panchanama was prepared and further there is no evidence that



after drawing sample, rest of the contraband was kept in Malkhana.

- that the prosecution has utterly failed to prove that the FSL report is in respect of the same sample which was drawn from the contraband allegedly seized from the appellant.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no infirmity in it warranting interference by this Court.

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

08. PW-1 Kripa Sindhu Mihir is the conductor of the bus in which the appellant was allegedly travelling with contraband. He has stated that the bus was stopped by the police, they entered the same and found one suitcase beneath Seat Nos. 34 to 36 and 39 and after checking the suitcase informed him that there is ganja in the suitcase. He has stated that against Seat Nos. 34, 35, 36 and 39 he had issued four tickets but he cannot say as to whether appellant was present in the bus or not on the said date. PW-2 Amarnath Saluja, Excise Sub Inspector, had physically examined one sample of contraband, which was produced before him on 12.4.1994 and prima facie found it to be ganja. However, he advised for chemical examination of the contraband vide Ex.P/1. PW-3 Vishwanath Sinha, independent witness of seizure memo Ex.P/2 has not supported the prosecution case and has been declared hostile.

09. PW-4 LK Pandey, investigating officer, has stated that upon



receiving secret information he stopped the bus near forest barrier, he does not remember the number of the bus; one suspicious suitcase was found in the bus; upon enquiry he came to know that the said suitcase belonged to the appellant; on being noticed under Section 50 of the Act vide Ex.P/4 the appellant consented to be searched by him and on search, 8 kg of contraband was found in the suitcase. The contraband was seized vide Ex.P/2 and one sample of 100 gm of contraband was drawn. He got the said sample physically examined vide Ex.P/5. After returning police station, he registered FIR (Ex.P/6). Vide Ex.P/7 he sent the said sample to FSL, receipt of which is Ex.P/8 and FSL report is Ex.P/10 which confirmed the contraband to be ganja.

10. Close scrutiny of the evidence makes it clear that there is total non-compliance of the mandatory provisions of the Act. The investigating officer (PW-4) has nowhere stated that the secret information was reduced in writing and was sent to higher official as required under Section 42 of the Act. Similarly, there is no evidence on record to show that the sample drawn from the contraband was properly sealed and kept in safe custody in accordance with Section 55 of the Act. Furthermore, there is also no evidence as to in what manner the sample was drawn as even no weighment panchanama of the seized contraband is there to prove the quantity and the seizure witness PW-3 has also turned hostile. No report of the arrest and seizure was forwarded to the superior officials which shows non-compliance of Section 57 of the Act.

11. There is patent illegality in the case of the prosecution and such illegality is incurable. This is a case of total non-compliance, thus the question of substantial compliance would not even arise for consideration of the Court in the present case. The twin purpose of the provisions of Section 42 which can broadly be stated are that : (a) it is a mandatory provision which ought to be construed and complied with strictly; and (b) compliance of furnishing information to the superior officer should be forthwith or within a very short time thereafter and preferably post-recovery.

12. Once the contraband is recovered, then there are other provisions like Section 57 which the empowered officer is mandatorily required to comply with. That itself to some extent would minimize the purpose and effectiveness of Section 42 of the NDPS Act, however, Section 57 of the Act has also not been complied with in this case. It is to provide fairness in the process of recovery and investigation which is one of the basic features of our criminal jurisprudence. It is a kind of prevention of false implication of innocent persons. The legislature in its wisdom had made the provisions of Section 42 of NDPS Act mandatory and not optional.

13. Thus, the prosecution has failed to prove involvement of the accused/appellant in the crime in question on the basis of evidence adduced by it beyond the shadow of reasonable doubt, entitling him to acquittal of the charge under Section 20(b)(i) of the Act and as such, the present appeal merits grant of relief to the accused. Accordingly, the impugned judgment of the trial Court is hereby set aside and the appellant is acquitted of the charge under Section 20(b)(i) of the Act by

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extending him benefit of doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

14. Before parting with this case, I deem it appropriate and therefore, direct the Director General of Police of the State to issue appropriate instructions directing the investigating officers to duly comply with the provisions of Section 42 of NDPS Act at the appropriate stage to avoid such acquittals. Compliance to the provisions of Section 42 being mandatory, it is the incumbent duty of every investigating officer to comply with the same in true substance and spirit.

15. The Registry shall send a copy of this judgment to the Director General of Police of the State for immediate compliance.

16. The appeal is, accordingly, allowed.

Sd/-
Pritinker Diwaker
Judge

Khan