

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 729 of 2014

- Mahendra Singh Thakur, S/o Imrat Singh, aged 22 years, R/o Umariya, P.S. Tejgarh, District Damoh (M.P.)

---- Appellant

Versus

- State of Chhattisgarh, Through : The Aarakshi Kendra G.R.P. Bilaspur, (C.G.)

---- Respondent

For Appellant :	Shri K.K. Khatri, Advocate
For State :	Shri O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

15/11/2016

1. This appeal has been preferred against the judgment of conviction and sentence passed by the Special Judge, Bilaspur (C.G.) constituted under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '*NDPS Act*') in Special Case No. 27/2013 on 21/04/2014, by which the appellant has been convicted under Section 20(b)(ii)(B) of NDPS Act and sentenced with rigorous imprisonment of 4 years with fine of Rs.5000/- with default stipulation.

2. The facts of the case are these, that on 27/07/2013 Sub Inspector, S.L. Navratna (PW-7), SHO GRP, Bilaspur received information from one informer, that one person is having in his possession narcotic substance ganja for the purpose of sale and

looking to board a train. He took down the information in Station House Diary vide (Ex.P/17) and intimation regarding this information vide (Ex.P/4) along with intimation to proceed without search warrant vide (Ex.P/5) was sent immediately to office of SRP, Bilaspur. Thereafter witnesses were summoned vide notice (Ex.P/1 and P/2). On arriving at the spot platform No. 7, appellant was found present carrying an air bag with blue and khakhi colour. A notice under Section 50 of NDPS Act was given to the appellant vide (Ex.P/10), thereafter appellant was afforded an opportunity to search the members of the raiding party vide (Ex.P/3) which resulted in negative. After this, bag of appellant was searched, in which 5 packets were found containing Ganja which was verified by rubbing, smelling and burning. A memorandum was prepared vide (Ex.P/11) in presence of witnesses, the weighment procedure was conducted vide (Ex.P/12 and P/13). Narcotics substance ganja was seized vide seizure memo vide (Ex.P/14). On returning to GRP Police Station entry was made in station house diary vide (Ex.P/27 'C') and one FIR (Ex.P/28) was recorded registering the offence under Section 20 (b) of NDPS Act against the appellant. During weighment Panchnama vide (Ex.P/13). Two samples were prepared from the seized article which was sent for FSL examination. FSL report vide (Ex.P/32 and 33) has confirmed the seized article as ganja a narcotic substance. After completion of investigation, charge-sheet was submitted against the appellant. The appellant was charged under Section 20(b)(ii)(B) of NDPS

Act, on his denial trial was conducted and on conclusion of trial appellant was convicted and sentenced as per the details given above.

3. The grounds in this appeal are these, there is no evidence on record to show, that from which articles the sample was prepared. There is no evidence to show regarding the deposit of narcotic substance in safe custody and about the taking out of the substance. There is nothing to establish that the article examined and reported as ganja was the same article which was seized from the possession of the appellant. There had been breach of provision under Section 50 of NDPS Act. As per the evidence regarding deposit of 5 Kg. Ganja in police station, it makes clear that no part of this article was used for verification as narcotic substance. The prosecution story cannot be regarded as truthful, on this basis it is prayed that appeal be allowed and the appellant be acquitted of charge.

4. It has been submitted by the appellant counsel, that evidence on record is not sufficient to show, that the seized article which was alleged to be narcotic substance ganja was kept in the Malkhana of Police Station GRP and sent for FSL examination without any tampering. On the other hand, the evidence itself indicates that the sample articles which were sent for FSL examination had no connection with the article seized from the appellant. On this count alone the appellant is entitled to be given

benefit of doubt. The procedure as laid down in NDPS Act has not been carried out regarding search and seizure of article from the possession of appellant.

5. On the other hand State counsel has opposed the submission made by counsel for appellant, it is submitted that prosecution has proved its case beyond reasonable doubt and there is no scope for interference in the impugned judgment.

6. After hearing the arguments and perusing the evidence before the trial Court it is examined whether the conviction against the appellant is supported by legally admissible evidence or not?

7. Sub Inspector S.L. Navratna (PW-7) has stated that he was informed by one informant, which he recorded in Station House Diary vide (Ex.P/17) and after sending required intimation to the higher office, he proceeded to the spot for doing the needful. The intimation was sent regarding information from the informant vide (Ex.P/4) which has been received in the office of SRP, similarly vide Ex. P/5 S.L. Navratna (PW-7) sent intimation that the suspect allegedly in possession of ganja may leave by train, because of which he is required to proceed without obtaining search warrant. This intimation was also received by office of SRP Raipur. This is sufficient compliance of Section 42 of NDPS Act. Thereafter S.L. Navratna (PW-7) raided, searched and seized article from the appellant. S.L. Navratna (PW-7) further stated that on reaching the spot a notice under Section 50 of the NDPS Act was served on

appellant vide (Ex.P/10) informing his right to be searched in presence of gazetted officer and Magistrate. The appellant gave a consent vide (Ex.P/23) wherever further proceeding was done. In this case the present appellant was not subjected to search, on the contrary belongings of appellant were searched. Section 50 of the NDPS Act is a requirement essential when the person of the accused has to be searched otherwise there is no such requirement. Apex Court in **Kanhaiyalal v. State of M.P., (2000) 10 SCC 380** has settled the view that search etc. otherwise than from the person of accused, has no applicability of Section 50 of NDPS Act. Also held in **Union of India v. Major Singh, (2006) 9 SCC 170**.

8. Further S.L. Navratna (PW-7) has stated, that the member of raiding and searching party were searched by the appellant vide (Ex.P/3) and no objectionable substance was found in their possession. Thereafter appellant was searched and the bag in possession of the appellant was searched and in which 5 packets were found. The contents of these packets were taken out and verified by rubbing, smelling and burning, on the basis of his experience this witness confirmed that the seized article was ganja, one memo (Ex.P/11) was written down. Thereafter weightment procedure was carried out vide (Ex.P/12 and P/13). During this procedure, two samples packets were prepared, marked as A-1 and A-2 and sealed, each containing 50 gr. of ganja. All the packets were made intact and sealed. This statement

is un-rebutted in cross-examination. Further it was supported by witness of the spot Sheru Khan (PW-6). (Ex.P/12) is the memo regarding Taraju and weights according to which the weights were of the denomination of 5 Kg., 2 Kg., 1 Kg. and 50 gr. Vide (Ex.P/13) the narcotics substance ganja was found to be 5 Kg., out of which two packets A-1 and A-2 prepared each containing 50 gr. (Ex.P/14) is seizure memo according to which the two samples and the remaining seized article weighing 4 Kg. 900 gr. were seized. There is evidence in support of this memo which has remained unshaken. The argument made on behalf of the appellant in this regard that the preparation of sample and packing etc. of the remaining seized article is doubtful finds no place.

9. S.L. Navratna (PW-7) has further stated that on returning to police station he recorded that in station house diary vide (Ex.P/27) and then registered an offence vide FIR (Ex.P/28) against the appellant. Thereafter he handed over the seized articles to Malkhana Moharrir vide (Ex.P/7). Head Constable (PW-4) stated, that he received two samples packets and one packet weighing 4 Kg. 900 gr. in sealed condition, after making an entry in the register (Ex.P/6) he deposited the same. On 01/08/2013 the sample packets A1 and A2 were handed over to Constable (PW-5) Mannu Prajapati and who on receiving the sample packets with a memo vide (Ex.P/8) carried and deposited that with FSL, Raipur and obtained acknowledgement vide (Ex.P/9). This unchallenged statement of witnesses clearly establishes, that the articles which

were seized from the spot were sealed and preserved in presence of witnesses, thereafter the same article was handed over to Malkhana Moharrir who received the articles and deposited the same in safe custody. The samples of the same article marked A-1 and A-2 were sent for FSL examination and received by the FSL. There is no such statement of any of the witness to suggest that there was any tampering. There is statement of witnesses that the samples were prepared from the same material which was seized from the possession of the appellant. Hence looking to this evidence, the arguments submitted on behalf of the appellant is without any substance and support. Defence has not led any evidence. The evidence produced by the prosecution have remained unshaken. There is no ground to come to such conclusion, that the sample which was examined by the FSL Raipur and confirmed to be narcotic substance ganja, did not belong to the appellant. On the contrary it is found that prosecution has successfully established on the basis of evidence, that the articles seized from the possession of appellant was narcotic substance named as ganja.

10. On perusing and analyzing the evidence on record led by the prosecution, it is found that there is no scope for interference in the impugned judgment. It has been submitted on behalf of counsel for appellant, that out of four years of the substantive sentence awarded to the appellant, he has already undergone 3 years, 2 months and 18 days, hence prayed that the sentence part

may be modified to sentence already undergone. Looking to the facts and circumstances of the case and considering that the effect of this kind of offence is harmful to the society at large, the punishment awarded to the appellant cannot be considered to be on the higher side or harsh, hence the order of sentence in the impugned judgment is just and proper, which needs no interference. Considering all these facts, arguments and propositions of law, it is found that the appeal has no substance which is liable to be dismissed. Hence, this appeal is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE