

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 300 of 2014**

- Mukesh Kumar Rawte S/o Shri Chaitram Rawte Aged About 32 Years R/o Village Singdayee, P.S. Basantpur, Distt.-Rajnandgaon (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through The SHO, Nagarnar, Distt. Bastar (C.G.)

---- Respondent

 For the Appellant : Shri Ranjana Jaiswal, Advocate.
 For the Respondent/State : Shri Neeraj Sharma. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****19/12/2016**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by Special Court (under NDPS Act), Jagdalpur in Special Case No.06/2008 on 18.02.2014, whereby appellant was convicted under Section 20(B)(II)(C) of the NDPS Act, 1985 and sentenced to undergo R.I. for a period of 10 years with a fine of Rs.1 lac along with default stipulation.

2. The case of prosecution is this, that on 14.01.08, S.I. Yakoob Meman(PW/6) received information from an informer at about 6:00 a.m. in the morning telephonically that narcotic substance ganja is being transported in an unnumbered Silver coloured Tata Indica Car from Orissa to Raipur via Jagdalpur. He immediately recorded information Panchnama and sent information to his superior Officer, C.S.P. Jagdalpur by memo Ex.P/4. Further one Panchnama was recorded about reasons for proceeding immediately to apprehend and search the unknown culprits on N.H.43 village-Dhanpunji. One unnumbered Indica car was stopped on the spot in which appellant was the occupant, he was served with a notice Ex.P/11 under Section 50 of the NDPS Act. Appellant gave written consent for being searched by the officer present. Appellant was offered an opportunity to search member of search party which he availed of vide Panchnama Ex.P/12. Car in possession of the appellant was searched vide Ex.P/13. On search 12 gunny bags were found in the boot of the car, each filled with narcotic substance ganja, a recovery memo Ex.P/14 was recorded separately, identification of the recovered substance as narcotic substance ganja was done vide Ex.P/15. Contents of all gunny bags were mixed to make homogeneous mixture, out of which 24 sample packets were prepared for each gunny bags. Each packets of 25gm, vide memo Ex.P/16 and Ex.P/17. The sample packets and the remainder were sealed, a

memorandum of Panchnama was separately recorded vide Ex.P/18, 12 gunny bags containing narcotic substance ganja and 24 sample packets were seized vide seizure memo Ex.P/19. Papers of the car used for transport of ganja were seized Ex.P/20. A weighing procedure was carried on vide Ex.P/1 and Ex.P/2 according to which the total contents of narcotic substance ganja in 12 gunny bags was 154kg.

One unnumbered FIR Ex.P/31 was recorded on the spot. On the basis of which, numbered FIR Ex.P/33 was recorded in P.S.-Nagarnar, registering offence under Section 20(B)(II)(C) of the NDPS Act, 1985. Each step of the proceedings were recorded in the station house diary vide Ex.P/24, Ex.P/25, Ex.P/26, Ex.P/27 Ex.P/28, Ex.P/32 and Ex.P/38. Spot map was prepared vide Ex.P/30. Sample packets of narcotics substance was sent for FSL examination report Ex.P/37 was received from FSL Raipur, according to which the contents of all the sample packets were narcotic substance ganja. On completion of investigation, appellant was charge-sheeted.

3. Appellant was charged under Section 20(B)(II)(C) of the NDPS Act, 1985 to which he denied and demanded for trial. In trial, prosecution examined 7 witnesses. On examination under Section 313 of Cr.P.C., appellant denied each and every circumstances in prosecution evidence against him. He pleaded

innocence and false implication, no witness was examined by the defence and the impugned judgment was passed in which appellant has been convicted and sentenced, as mentioned above.

4. The grounds in this appeal are these, the conviction against appellant is bad in law, which is against the facts and circumstances. The trial Court has failed to appreciate, that the mandatory provision of Section 42, 52, 55 and 57 of N.D.P.S. Act have not been followed and all the proceeding were done by the Investigation Officer. Documents were fabricated, the seized contraband was not exclusively preserved, the weighing procedure of the seized article, is also under question. The manipulation and concoction by the investigator has been overlooked by the trial Court. It is prayed that appellant be acquitted of the charges.
5. Learned counsel for the appellant submits, that appellant has failed to prove its case beyond reasonable doubt. All the independent witnesses for prosecution have turned hostile. The conviction is based solely on the evidence of the police witnesses, which cannot be considered as trustworthy because it is the interest Investigating Officer to see that prosecution is successful. Provisions of NDPS Act were not followed in conducting the investigation which entitles the appellant for

acquittal.

6. Learned counsel for the State has argued that the prosecution has successfully proved its case beyond reasonable doubt. Failure of independent witnesses to support the Investigating Officer and the statement of other members of the raiding party by itself is not ground to discard the evidence of prosecution. It is not a rule of law that the statement of police witness should be disbelieved in every case. The evidence of Investigating Officer and the members of raiding party, had been trustworthy, which is the reason that trial court has relied upon and passed the judgment against the appellant.
7. Considering the arguments submitted and the grounds raised in this appeal, the question before this court is whether the conviction against the appellant is supported by the prosecution evidence beyond reasonable doubt?
8. S.I. Yakoob Memon (PW/6) stated that, he was posted as SHO in P.S.-Nagarnar. On 14.01.2008 in the morning at about 6:00 a.m., he received telephonic information from one informant, that a person in an unnumbered silver coloured Tata Indica Car was transporting illegal narcotic substance ganja from Orissa to Jagdalpur towards Raipur. He immediately recorded the information in Rojnamcha sanha Ex.P/24 and sent information to

C.S.P., Jagdalpur. Witnesses were summoned and departure was recorded in Rojnamcha Sanha vide Ex.P/25 and a report Ex.P/24 was dispatched to superior Officer. On arrival of witnesses Ramesh Mishra (PW/5) and Pritam (PW/4), he made entry in Rojnamcha Sanha and recorded a Panchnama and giving reason for inability to obtain search warrant vide Ex.P/5, he proceeded to the spot along with other staff as per the information given.

One car matching the description as per information was stopped, which was driven by the appellant, who on interrogation told that his name is Mukesh Kumar Rawte, a notice under Section 50 of NDPS Act Ex.P/11 was served on the appellant, intimating about his rights in this search proceeding. Appellant gave his written consent, to be searched by the officer present. After left appellant was offered opportunity to search the members of the search party vide Ex.P/12. Thereafter the car in possession of the appellant was searched, in the boot of that car 12 gunny bags containing material which appeared like narcotic substance ganja were found vide search memo Ex.P/13. A recovery memo ExP/14 was recorded separately, the contents of the gunny bags were identified by smelling it and burying it in the presence of witnesses and a memo Ex.P/16 was recorded in this respect.

For the weighing of the seized article, one Panchnama of the balance was done vide Ex.P/1 and the seized articles in 12 gunny bags were weighed. The total weight was found to be 154kg. Contents of all the gunny bags were taken out to make a homogeneous mixture out of which two packets for each gunny bags, in total 24 sample packets of 25gm each were prepared, sealed and preserved vide Ex.P/16, 17 and 18. All the gunny bags and sample packets were seized vide Ex.P/13. Papers of the car carrying ganja were seized vide Ex.P/20. Appellant was arrested vide Ex.P/21. Spot map was prepared Ex.P/13.

FIR was recorded Ex.P/31 on the spot. S.I. Yakoob Memon along with other staff members and carrying the seized articles arrived at P.S.-Nagarnar and recorded the numbered FIR Ex.P/33. A report of whole proceeding was prepared and sent to the office of Superintendent of Police, Jagdalpur. The sample packets and the seized articles was deposited in the Malkhana of Police-Station, sample packets was separately sent for FSL examination vide Ex.P/36 and a report vide Ex.P/37 was obtained which is on record. In cross-examination, the statement of this witness has remained unrebutted, minor discrepancies in his statement are of no significant.

9. Head Constable Sarkar Singh Sori (PW/1) had been witness to the search and seizure of narcotic substance ganja on the spot

and is witness to the weighing procedure vide Ex.P/1, Head Constable Sukal Singh Gawade (PW/3) posted in the office of C.S.P., Jagdalpur, received information sent by Investigating Officer vide Ex.P/4, Ex.P/5, and Ex.P/6.

10. Kunwar Singh Netam (PW/2) is the Head Constable and Malkhana incharge in P.S.-Nagarnar, who has stated that about depositing of the seized articles and sample packets by Investigating Officer S.I. Yakoob Memon (PW/6). Independent witnesses Pritam Singh Thakur (PW/4) has not supported the prosecution case and declared hostile. Similarly independent witness Ramesh Mishra (PW/5) has also been declared hostile. Hostility of these witnesses does not affect the statement of other prosecution witnesses, a witness who states against the case of prosecution when challenged and declared hostile under Section 154 of Evidence Act, 1872 and his credibility is impeached by the prosecution, then any adverse statement given by such witness has no effect. For these reasons, the statement of Yakoob Memon (PW/6) can be taken into consideration without being affected by the statement of these hostile witnesses.

11. In the detail cross-examination of Investigating Officer Yakoob Memon (PW/6), no such question was put to him, that he had any adverse interest against the appellant or had any enmity with him. It is not a rule of law that the statement of a police witness

shall be disbelieved, but there is of course a rule of caution because the Investigating Officer has an interest to see that the prosecution achieves success. Apart from these things, the other members of the search party have deposed in support of prosecution. There is no reason to disregard the statement of Investigating Officer, especially when in such a case he himself happens to be an eyewitness of the search and recovery. Only for these reasons, that he recorded various memorandums and proceeded for his prosecution, does not make his statement unreliable. Hence, for these reasons, the statement of Investigating Officer Yakoob Memon (PW/6) is found fully reliable. Trial Court had arrived at conclusion in the judgment and given finding against the appellant/accused based on this evidence, which cannot be regarded as incorrect finding. It is not disputed that the seized articles in 12 gunny bags was narcotic substance ganja, which has been confirmed by the evidence of FSL report vide Ex.P/37. As per the evidence on record, appellant had been in possession and transporting 154kg ganja, it is a huge quantity of narcotic substance.

12. After aforesaid discussions and for the reasons mentioned above, it is found that this appeal has no substance. Hence, it is liable to be dismissed and is hereby dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

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