

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 885 of 2010**

(Arising out of judgment/order dated 30.10.2010 in Special Case No.46 of 2008 passed by the learned Special Judge (NDPS Act), Jagdalpur)

- Kuleshwar Dhruv

---- Petitioner

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant
For State

Mr. FS Khare, Advocate
Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Judgment On Board****9/9/2017**

1. Heard.
2. This is a jail appeal preferred by the prisoner, who has been convicted under Section 20 (b) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the NDPS Act, 1985") and sentenced to undergo RI for 3 years and pay fine of Rs.3000/-, in default of payment of fine, to further undergo additional RI for 6 months.
3. The impugned judgment would reflect that after the appellant's arrest on 16.10.2008, the appellant was never released on bail

till the date of judgment i.e. 30.10.2010 and as such, he remained in jail for about 2 years and 14 days, during pendency of the trial and thereafter, in this appeal also, which is pending since last about 7 years, therefore, he has undergone the entire jail sentence including the default sentence.

4. The appeal has been preferred as an appeal preferred by the prisoner, wherein, the Counsel has been appointed through the Legal Aid.
5. Today, in the absence of the counsel appointed through the Legal Aid, I have requested Mr. F.S. Khare, Advocate, who is in the panel of the Advocates prepared by the High Court Legal Aid Committee, to argue the matter on behalf of the appellant.
6. Since Mr. F.S. Khare, Advocate is ready, he is appointed by this Court to argue the matter on behalf of the appellant.
7. The said exercise is done in view of the fact that this Bench has been constituted by Hon'ble the Chief Justice on a Saturday for expeditious disposal of matters filed through Legal Aid/Jail Appeals.
8. The record was handed over to Mr. FS Khare, Advocate so that he may argue the case for addressing the Court on behalf of the appellant. The matter was then taken after about 1 ½ hour and the arguments of learned counsel for the parties were heard.
9. ASI Santosh Singh received information through his informer (*Mukhbir*) at 7:30 am on 16.10.2008 that an unknown person is

carrying white plastic bag and waiting at village Bhejripadar and Kosmi triangle to board a bus for Jagdalpur. He recorded the information on *Roznamchasana* – Ex.P/19C; sent information to his superior officers; summoned two independent witnesses; and proceeded towards the place by recording the same in the *Rawangisanha* -Ex.P/20C. All other formalities including summoning of independent witnesses Baisakhu and Hannuram; informing them about the information received from *Mukhbir*; inability to obtain search warrant immediately etc. have also been recorded in the *Roznamchasana* duly exhibited during the course of trial.

10. The Police team intercepted the appellant at 10.05 p.m. and recovered one white colour plastic bag from him, wherein, 8 Kg 500 gm of illicit contraband was kept by him. Before seizure, the appellant was informed about his right to be searched before a Gazetted Officer/Magistrate or by the Police Officer himself, on which, he consented for search and seizure by the Police Officer. After making recovery, the seized contraband drawn from the white plastic bag of the appellant, was sent for chemical analysis on the date of the incident itself. The report of Chemical Analyst -Ex.P/33 was positive certifying that the seized contraband was *Ganja*.

11. On the basis of evidence available on record, the trial Court has convicted the appellant under Section 20 (b) (B) of the NDPS Act, 1985 and sentenced him as mentioned in para 1 of this order.

12. Mr. F.S. Khare, learned counsel for the appellant, would submit that the independent witnesses have not supported the prosecution case, therefore, merely on the basis of statement of Police Constables and Investigating Officer, the appellant cannot be convicted.

13. Per contra, Mr. Sameer Behar, learned Panel Lawyer for the State, would submit that if there is no material defect in the investigation, the statement of Investigating Officer can form the basis for conviction.

14. PW-1 Shivbhajan Rana is the Head Constable and *Malkhana Mohrir* of Police Chowki, Bakawand. He has proved the deposit of recovered contraband in the *Malkhana* and its dispatch for FSL examination on 18.10.2008 i.e. within 02 days of the date of the incident. Thus, the sample was sent for chemical examination immediately after the incident and there is no delay on this aspect of the matter.

15. PW-2 Sukal Singh Gobde is the Reader of Superintendent of Police, Jagdalpur. He has proved the communications received by the SP Office from the concerned Police Station regarding the secret information; departure by the raiding party; inability to obtain Search Warrant etc. PW-3 Budhman Singh Samrat is also a Constable at Police Chowki, Bakawand. He had taken the sample on 20.10.2008 for chemical examination to Forensic Science Laboratory, Raipur. PW-4 Rajendra Kumar Korram had gone to summon and bring independent witnesses.

16. PW-5 Baisakhu and PW-6 Hannuram are the independent witnesses to the search and seizure of the plastic bag and *Ganja* contained therein. While both of them have turned hostile, one of them, Baisakhu (PW-5) has supported the prosecution case during his cross-examination by the prosecution. However, when cross-examined by the Defence Lawyer, he has again reiterated his statement and on the basis of which, he was declared hostile. PW-7 Santosh Singh is the Investigating Officer.

17. In ***Govindaraju alias Govinda Vs. State by Sriramapuram Police Station and another, (2012) 4 SCC 722***, the Supreme Court has held that a conviction can rest on the sole testimony of Investigating Officer when his statement is otherwise convincing, reliable and trustworthy and there is nothing to point out as to why the Investigating Officer would falsely implicate the accused persons.

18. In the case at hand also, the appellant has not brought any independent evidence on record about his previous enmity with the Investigating Officer or any other reason as to why the Investigating Officer would falsely implicate him in a case of possession of illicit *Ganja*. Even otherwise, the appellant being a resident of Dhamtari has not stated in his defence as to the purpose for which he had gone to village Bhejripadar, Jagdalpur District Bastar on the date of the incident.

19. In addition to the fact that the report of chemical analyst is positive, there is absolutely no dent in the statement of the

investigating Officer pointing out such serious infirmity in the steps taken right from the stage of recording his *Mukhbir* information to the stage of making recovery and sending articles for chemical analysis. Thus, in the absence of any defect of substantial nature, the evidence of the Investigating Officer is fully reliable to rest the appellant's conviction for committing offence under Section 20 (b) (B) of the NDPS Act, 1985.

20. For the foregoing, there is no substance in this appeal, in which, the appellant has otherwise already suffered the entire jail sentence. The appeal is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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