

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.844 of 2002**

Adam Mallick S/o Pripan Mallick, Aged about 20 years, R/o village Kandpana
Ghadda PS Odala, District Gajapati, Orissa.

---- Appellant

Versus

State of Chhattisgarh.

---- Respondent

For Appellant
For respondent/State

Shri Suryakant Mishra, Advocate.
Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

07.10.2017

1. The appellant stands convicted for the offence punishable under Section 20-B(i) of the Narcotic Drugs and Psychotropic Substance Act (in short the Act) and have been sentenced to undergo RI for 3 years with fine of Rs.1000/- with default stipulation, vide judgment dated 01.07.2002 passed by the Special Judge (NDPS Act), Durg, in NDPS Special Case No.03/2002.
2. As per prosecution case, the present appellant along with two other persons were said to be travelling by Puri-Ahmedabad Express Train. They got down at Power House Station at Bhilali. On secret information received, a search was conducted in this regard of the luggage which the appellant was carrying and with the consent of the appellant when his suitcase was opened, 8 kg of Ganja was found and subsequently after the mandatory compliance under the provisions of the Act, two

samples of 50 grams each were prepared and the appellant was charged against the appellant for an offence punishable under Section 20-B(i) of the Act. The matter was put to trial before the Special Judge (NDPS Act), Durg.

3. There was 3 witnesses examined on behalf of the prosecution side and there was no witness in defence and the learned Special Judge after completion of trial vide the impugned judgment, finding the appellant to be guilty of having committed the offence, convicted and sentenced him as mentioned in paragraph 1 of this judgment.
4. Learned counsel for the appellant assailing the impugned judgment of conviction submits that the trial court has not properly appreciated the fact that the provisions of Section 42 have not been strictly complied with in the instant case and therefore, the benefit of the same would go in favour of the appellant. Likewise, it was also submitted that statutory and mandatory provisions of Section 50 of the Act also has not been fulfilled. It was also alleged that the provisions under Sections 52,55 and 57 of the Act have also not been followed while prosecuting the appellant. Hence, the entire case of prosecution collapse and the judgment of conviction deserves to be set aside.
5. Per contra, learned counsel for the State opposing the appeal submits that it is a case where the prosecution witness have infact supported the case of the prosecution and there is no illegality or infirmity in the findings of guilt arrived at by the Trial court. He further submits that the prosecution case have also been supported by the independent witness examined and thus the judgment of conviction does not warrant any

interference and prayed for rejection of the appeal.

6. Having heard the rival contentions put forth on either side and on perusal of records, particularly the evidence which have been brought by the prosecution, it reflects that so far as the requirement of Section 42 is concerned, the prosecution infact has led evidence of Anup Ram Sahu, Head Constable, PW-1, who has specifically deposed giving the details of the information received at the police station and thereafter further information being sent to the higher authorities and the subsequent proceedings which were drawn which also reflects the fulfillment of the mandatory provisions both under Sections 42 as also under Section 50 of the Act. There was no substantive cross examination made in this regard by the defence with which the deposition of said witness was to be disbelieved, disproved or doubted.
7. Likewise, the independent witness in the instant case also have supported the case of the prosecution inasmuch as Mohan Lal, PW-3, has supported the case of the prosecution and his deposition reveals the compliance of statutory and mandatory provisions of the Act. In addition, the case of the prosecution was also proved by the deposition of Sub Inspector, SK Pandey, PW-2.
8. Considering the evidence which have come on record particularly the independent witness examined, this court does not find any strong case made out by the appellant for setting aside the impugned judgment of conviction nor does this court find any illegality or infirmity nor is the finding of the court below found to be contrary to evidence.

9. Thus, the appeal fails and is accordingly rejected. At this juncture, it is necessary to mention that a report has been received from the Central Jail, Jagdalpur, that the appellant having been completed his jail sentence have already released from jail on 20.09.2008, thus, no further steps is required to be taken.

Sd/-
(P.Sam Koshy)
Judge

inder