

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.953 of 2002**

Umesh Giri S/o. Shibaji Giri, aged 26 years, Occupation Majduri,
R/o. Ramnagar, Supela, Distt. Durg

---- Appellant

Versus

State of Chhattisgarh, Police Station Bodhghat, Distt. Bastar
Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Minu Banerjee, Advocate.
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

27.10.2017

This appeal is preferred against the judgment of conviction and order of sentence dated 12.4.2002 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Bastar at Jagdalpur in Special Case No. 08/2002, wherein the trial Court convicted the appellant under Section 20(b)(1)B of the Act and sentenced him to undergo imprisonment for two years and six months and to pay fine of Rs.3000/- with default stipulations.

2. As per the prosecution case, the appellant was in conscious possession of contraband article Ganja and on 19.02.2002 Police Officer, Police Station Bodhghat was informed about the possession of the ganja by the appellant. After receiving the information, the Police Officer swing into action and they arranged trap in a bus in which the appellant was travelling and after the search of the appellant he was found with a bag containing ganja in it packed in a polythene. Seizure of the ganja was made in the presence of witnesses and legal formalities were completed as per the provisions of law. After seizure of the ganja two packets of 25 grams each were prepared from the ganja as samples and those samples were sealed on the spot. Rest of the ganja was sealed in another packet. Specimen seal was prepared on the spot, seized ganja was handed over to the Police Head Constable Bhikhari Prasad Joshi (PW-3) to keep the same in the malkhana. Seized samples were sent to Forensic Science Laboratory for examination as per the memo of Superintendent of Police Jagdalpur and as per the report of the Laboratory, test of ganja was found positive. After investigation, charge sheet was filed before Special Judge under the Act, who framed the charges as mentioned above against the appellant to which the appellant did not plead guilty. The Special Judge under the Act conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the Special Judge considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

- I) Conscious possession has not been proved of the accused person regarding the contraband
- II) Mandatory provisions of Sections 50, 55 and 57 of the NDPS Act are flouted with.
- III) The prosecution has not established that sealed packets were received by the FSL intact.
- IV) To whom the sample packets was entrusted in Malkhana and specimen seal was entrusted in Malkhana have not been proved.
- V) What manner was adopted for taking samples, sealing and packing and despatching the same for analysis, is not established.
- VI) Specimen seal was not brought at the time of seizure and the same was not sent to FSL for comparison.
- VII) Investigating Officer himself is a witness of recovery and investigation ought to have been carried out by some independent Police Officer and, therefore, the investigation is not fair and proper. Further to support her case, learned counsel for the appellant placed reliance on **(1)** 1997 (1) Crimes 331 Kanduri Sahoo vs. State of Orissa **(2)** 2011(4) MPHT 209 (SC) Narcotics Central Bureau Vs. Sukh Dev Raj Sodhi **(3)** 2006(2) Acquittal 160 Mohan @ Baisakhu Vs. State of Chhattisgarh **(4)** 2006(2) Acquittal 152 Kuleshwar Dhruw Vs. State of Chhattisgarh **(5)** 1992 CRI. L.J. 2342 Nathiya and another Vs. State of Rajasthan **(6)** (2000) 1 SCC 318 Thandi Ram Vs. State of Haryana **(7)** 1995 CRI. L.J. 3893 Nishan Singh Vs. State of UP **(8)** (2003) 9 SCC 159 Jagdish Vs. State of MP.

4. On the other hand, learned counsel for the State submits that the finding of the trial Court is strictly in accordance with law and the same is not liable to be interfered with by this Court invoking the jurisdiction of the appeal.

5. I have heard counsel for the parties and perused the material on record.

6. To substantiate the charge prosecution has examined as many as 4 witnesses. The appellant did not examine any witness in his defence.

7. Sub Inspector of Police SR Netam (PW-4) is a witness of seizure and he followed all the legal formalities as provided under the Act. He deposed that on 19.02.2002 he received information that one person is coming in a bus with conscious possession of ganja. He recorded the same in the rojnamchasanha as per Ex-P/19 and the information regarding the appellant was prepared as per Ex-P/20 and the same was sent to City Superintendent of Police, Jagdalpur as per Ex-P/21. Receipt by the City Superintendent of Police was received in Police Station and that was recorded in rojnamchasanha as per Ex-P/23. He further deposed that he stopped the bus which was going to Durg from Konta and for that he prepared panchnama as per Ex-P/2 and the accused/appellant was searched and was informed under Section 50 of the Act that he can be searched by any Gazetted officer or any Magistrate for which he issued notice as per Ex-P/15 and the accused consented for the search of his bag to the Police Officer and thereafter this witness has searched the bag and found that ganja was kept in the same. He further deposed that weight of the ganja was

done through balance and it was found to be 5 kg. He further deposed that two samples of 25-25 grams ganja were prepared and sealed on the spot and for that panchnama was prepared as per Ex-P/1. Seizure of the ganja was prepared as per Ex-P/11 and panchnama of samples were prepared as per Ex-P/12. Specimen seal was prepared as per Ex-P/13 and the specimen seal was affixed. He further deposed that ganja was handed over to Malkhana incharge of the Police Station and received acknowledgement from him and information regarding registration of offence was sent to the Court of Special Judge under the Act and the seized ganja was sent for examination to FSL and acknowledgement of the same was received as per Ex-P/34. As per the record of the trial Court, report of the FSL was received as Ex-P/36 and the same was positive for ganja. Again seized articles were examined by the witnesses at the time of seizure and the same was found to be ganja. There is no force in the submission of learned counsel for the appellant that mandatory provisions of Sections 50, 55 & 57 of the Act were not complied with. From the statement of Sub Inspector, it is clearly established that he informed the appellant about his right to be searched before the gazetted officer or the Magistrate and provisions of Section 50 of the Act was complied with. Again seized articles were kept in the malkhana in the safe custody and the same was handed over to the Constable for examination at the FSL. Again information of arrest and seizure were sent to Sub Divisional Officer (Police) and Sections 55 & 57 were complied with. From the evidence of Head Constable (PW-3) it is established that sample packets were entrusted to him for safe custody in the malkhana and

the same was kept by him and entries of this effect was made in the malkhana register as per Ex-P/18. There is no such prohibition in law that the Police Officer who seized the contraband article cannot investigate the same. After seizure from the appellant the ganja was kept in malkhana of the Police Station and the same was sent to FSL. It cannot be said that any provisions of the Act was flouted and that caused prejudice to the accused/appellant. As per the evidence of PW-1, he made weight of the seized ganja and it was found to be 5 kg 150 gm. Version of this witness is unrebutted and it is established that the ganja seized from the appellant was 5 kg 150 gm. Quantity seized is neither small quantity because small quantity is less than 1 kg and the quantity is not commercial quantity because commercial quantity is 20 kg and more. Case of the appellant falls under Section 20(b)(ii) (B) of the Act for which the trial Court convicted the appellant and the same is not liable to be interfered with by this Court and conviction of the appellant for the said Section is hereby affirmed. Cases relied by counsel for the appellant in the present matter are distinguishable from the facts and circumstances of the present case.

8. Heard on sentence.

Maximum sentence provided for the offence is upto ten years and the trial Court sentenced the appellant for two years and six months and the same cannot be termed as disproportionate or unreasonable or harsh. Sentence part is also not liable to be interfered with.

9. For the foregoing reasons the appeal is without substance and the same is accordingly dismissed. The trial Court is directed to issue

non bailable warrant of arrest against the appellant to send him in jail for serving out the remainder of the sentence.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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