

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.712 of 2006**

Narad Sahu, S/o Pusauram Sahu, Aged about 34 years, R/o Village Mainkchauri, PS Pipariya, Distt. Kawardha (CG).

---- Appellant

**Versus**

State of Chhattisgarh, through the Police Station, Bodhghat, Jagdalpur, Distt. Bastar (CG).

---- Respondent

---

|                      |   |                                                                 |
|----------------------|---|-----------------------------------------------------------------|
| For Appellant        | : | Smt. Nirupama Bajpai and Shri Shrawan Kumar Chandel, Advocates. |
| For respondent/State | : | Shri Anil S Pandey, Govt. Advocate.                             |

---

**Hon'ble Shri Justice P. Sam Koshy**

**JUDGMENT****Delivered on 12/10/2017**

1. The appellant stands convicted for the offence punishable under Section 20-B(ii)(b) of the Narcotic Drugs and Psychotropic Substance Act (in short the Act) and have been sentenced to undergo RI for 4 years with fine of Rs.5000/- with default stipulation, vide judgment dated 11.09.2006 passed by the Special Judge (NDPS Act), Bastar, in Special Case No.28/2005.
2. As per prosecution case, a secret information was received on 10.07.2005 at around 9:40 AM that the appellant was said to be moving with Ganja in a Blue bag which he was holding. After the mandatory compliance as is required under the provisions of the Act, the police authorities went to the spot and subjected the appellant to search in accordance with the provisions of the Act and found that the appellant

was carrying Blue air bag and when searched, it was found like a Ganja substance and upon weighting the same, it was found to be of 8.200 kg of which two packets of 25 grams each was collected as sample, marked Exs. A/1 and A/2, and after preparing Panchnama in this regard seizure proceedings were drawn and seizure Panchnama was also prepared and later on the appellant was put to trial with charge for the offence punishable under Section 20-B(ii)(b) of the Act before the Special Judge, NDPS Act, Bastar.

3. The prosecution in all examined five witnesses. There was no evidence led on behalf of the defence. After completion of evidence, the trial court vide impugned judgment dated 11.09.2006 finding the appellant guilty of having committed offence, convicted and sentenced him as mentioned at paragraph 1 of this judgment.
4. The grounds of assailing the judgment of conviction is that of non compliance of mandatory provisions under Section 42 of the Act. Without compliance of the same, the entire case of the prosecution gets collapsed. There is a major discrepancy in the evidence which has been led by the prosecution so far as statutory compliance as is required under Section 42 of the Act is concerned. According to appellant, the timing which is reflected in the various documents produced before the court below would show that compliance of Section 42 of the Act has not been sufficiently made and that there is a great element of doubt which is casted on the prosecution story and the benefit of the same should go to the appellant and the judgment of conviction thus deserves to be set aside/quashed.

5. He further submits that the material witnesses who is said to have complied the provisions of Section 42 of the Act; the Constable who had made entry in the records so far as receipt of secret information and also the Constable who had been deputed to give information in this regard to the higher authorities, all have not been examined and therefore, it cannot be said that the case of the prosecution has been sufficiently proved beyond reasonable doubts and the judgment of conviction is bad in law on the said count also. It was also contended by the counsel for the appellant that the prosecution story also stands disproved in the light of their being no witness to establish the fact as to from where the weighing machine was brought and used for the preparation of the weighment Panchnama which also all the more creates doubt in view of deposition of Investigating Officer, PW-4, who in his deposition has stated that the measurement that he has made initially was on the basis of assumption and gesture. It was further stated that the prosecution case has not been established by any independent witness as all the independent material witnesses examined have turned hostile and do not support the case of the prosecution which includes the important seizure witness. That, the benefit of all of which deserves to go in favour of the appellant and the judgment of conviction therefore, deserves to be struck down and the appellant deserves to be acquitted of the charges levelled against him.
6. The State counsel, on the contrary, submits that it is a case where the prosecution infact has led sufficient evidence to prove its case with which it can be safely inferred and concluded that the prosecution has

proved its case beyond all reasonable doubts and that mandatory compliance as is required under the provisions of the Act has been duly complied with and as such there is no illegality or infirmity in the said judgment of conviction and further there is no scope of any interference with the findings arrived at by the court below. Therefore, the appeal deserves to be rejected.

7. A perusal of records would show that the prosecution in the course of leading evidence had examined Santosh Kumar Markam, PW-1, Constable, who is a witness and went along with the Investigating Officer at the time of search and seizure and he is a witness to prove the seizure proceedings. He has deposed that it was he who has weighed the contraband and found to be 8.200 kg. He states that he had brought the weighment machine from a nearby shop. In addition, the only material witness who has been examined is OP Singh, PW-4, the Investigating Officer. So far as, PW-5 is concerned, he is B.P. Joshi, Assistant Sub Inspector, who is said to have received the contraband from the Investigating Officer and on receiving the contraband, placed it in the Malkhana vide Ex. P/34 and also has deposed so far as sample being sent for FSL by him. In addition, PW-2, Yogesh Chandra Tripathi and PW-3, Amit Das, the two seizure witnesses examined have turned hostile and have not supported the case of the prosecution.
8. As a result of independent seizure witnesses turning hostile, we have to look into the evidence laid down by the department to assess whether the mandatory statutory compliances, as is required, has been followed or not?

9. As regards, PW-1, Santosh Kumar Markam, if we look into his statement, who is a material witness to establish the seizure, he has clearly stated in his cross examination that he is not aware as to who was sent to the CSP office for information to the superior officer. Likewise, he also has in his cross examination deposed that he does not remember as to which was the color of the polythene in which the contraband was found. As regards weighing machine, he has stated that he had brought the weighting machine from a nearby shop and he himself had weighed the contraband.
10. From the aforesaid evidence of PW-1, what is reflected is that, his evidence does not disclose as to from where he had brought the weighting machine, when he had gone to bring the weighing machine and what was the measurement of weights used for weighing the contraband and he was also not aware as to how much time he had spent in the search and seizure proceedings at the place of incident i.e. near the bus stand square at Anand Dhaba.
11. Now the only material witness left other than PW-1 is PW-4, the Investigating Officer. Thus, what is apparent is the fact that there is no witness examined in respect of compliance necessary to attract Section 42 of the Act. Though the proceedings drawn by the Investigating Officer reveals certain names and the deposition also reveals certain name of Constables for compliance of Section 42 of the Act, but no such witnesses were examined to prove this fact.
12. In the deposition, the Investigating Officer has stated that he received the secret information at 9:40 AM. In his examination in chief he has

stated that the appellant was found to be in possession of Blue Color bag which was also the color of the bag received by the secret information. At this juncture, it would be relevant to mention that PW-1, the witness who had gone along with the Investigating Officer, in his cross examination has specifically stated that the bag which the appellant was holding was of black color. This by itself is a material contradictory statement made by two of the witnesses who conducted the search and seizure. The deposition of Investigating Officer also reveals that at about 9:45 AM he has sent the Constable Lokesh for calling the witness. Further, at 9:47 AM he has stated that he has sent Constable Nakul Ram to the office of CSP, Jagdalpur, however, from his deposition it is not reflected as to when he had received the information back so far as the information and intimation which has been provided to CSP, Jagdalpur.

- 13.** From the deposition of Investigating Officer it also does not reveal as to from where the Constable Santosh Kumar, PW-1, had brought the weighing machine or whether he was at all sent for bringing the weighing machine. Another discrepancy which is reflected from the deposition of Investigating Officer is the seizure of Rs.150/- from the possession of appellant which is not reflected from the deposition of PW-1. The Investigating Officer in his deposition has made statement that after conclusion of entire proceedings they reached back the police station at around 5:00 O' clock i.e. 17 Hours whereas, PW-1, in his cross examination has in paragraph 4 stated that the entire proceedings took only around one hours time whereas, from the deposition of the

Investigating Officer, it reflects that they were at the place of incident since 10 O' clock in the morning till 5 O' clock in the evening i.e. for almost about 7 hours. This contradictory statement of both the departmental witnesses gives rise to a great element of doubt in the proceedings drawn by the police authorities. Another discrepancy which is reflected in his evidence is that it was the Superintendent of Police who has deputed Constable Santosh Kumar for taking the sample packet Ex. A-1 to FSL Raipur for examination whereas, PW-5, B.P. Joshi, ASI, who was posted at police Station Bodhghat at that time states that it was he who had sent Constable No.28 with the sample of packet Ex. A/1 to the FSL, Raipur.

14. Another discrepancy which is reflected from the proceedings drawn is the fact that in the Panchnama drawn so far as secret information received and which was being sent to the superior authority i.e. CPS, Jagdalpur, the Panchnama in this regard Ex. P/21 & P/24 do not bear any timing (except the time referred in the Rojnamcha Sanha). Another aspect which gives rise to doubt to the proceedings drawn is the fact that the Investigating Officer at the time of search itself has given the measurement of the contraband of 8.200 kg which is the accurate weigh which was subsequently found to be the same during the weighing proceedings. It is hard to believe that the weighment of the contraband assessed by the Investigating Officer to be accurate in grams also and it was not an approximate assessment which he has made. Thus, it appears that the entire proceedings has been drawn subsequently and not at the place of incident.

- 15.** From the deposition of PW-5, B.P Joshi, it reflects that there is no endorsement in the document maintained at Malkhana as to exact time the contraband was deposited with PW-5 for being kept in safe custody in the Malkhana which further creates a doubt on the proceedings drawn by the police authorities. Further, the two Constables who were deputed firstly to call for the witness i.e. Yogesh Chandra Tripathi, PW-2 and Amit Das, PW-3, and the Constable who was sent to the office of CSP, Jagdalpur, further the Constable who had received the intimation in the office of the CSP, Jagdalpur, have not been examined which creates a great element of doubt in the minds of this court so far as authenticity and veracity of the proceedings drawn.
- 16.** As regards the provisions of the NDPS Act is concerned, since the penal provisions are stringent, the compliance required under the provisions of the Act has to be strictly followed. The Constitution Bench of Supreme Court in case of Karnail Singh Vs. State of Haryana, 2009(8) SCC 539, in a very categorical terms have held that non compliance of Section 42 of the Act are grave. Since the provisions of the Act are stringent, a duty is casted upon the prosecution to strictly follow the procedure and comply with all its safeguards. Likewise, the Supreme Court in case of Sukhdev Singh Vs. State of Haryana, 2013 (2)SCC 212 has observed that, “the provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the investigating officer.” It is further held that the provisions of Section 42 of the Act is mandatory and there cannot be escape from its strict compliance.

- 17.** A perusal of the deposition of the prosecution witnesses would clearly reveal that there are large number of contradictions and discrepancies in the prosecution case which gives rise to great element of doubt on the prosecution story and the benefit of doubt should always go in favour of the accused. In the instant case, the burden to prove the case of the prosecution, all the more, was required to be strictly proved as the seizure witness had turned hostile and have not supported the case of prosecution. Further the deposition of PW-1 when compared to deposition of PW-4, the Investigating Officer, there are material contradictions. There is material discrepancy so far as deposition of PW-4 when compared to deposition of PW-5 also, as has been reflected in the preceding paragraph.
- 18.** In view of the same, this court has no hesitation in reaching to the conclusion that it cannot be said that the prosecution has been able to prove its case beyond all reasonable doubts. Thus, granting benefit of doubts to the appellant in the instant case, the judgment of conviction deserves to be and is accordingly set aside.
- 19.** The appellant stands acquitted of the charges levelled against him for the offence under Section 20-B(ii)(b) of the NDPS Act. The bail bond of the Appellant shall remain in operation for a period of six months from today in view of provision contained in Section 437-A Cr.P.C.
- 20.** The Appeal accordingly stands allowed.

Sd/-  
(P.Sam Koshy)  
**Judge**