

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.768 of 2001

Judgment Reserved on : 21.9.2017

Judgment Delivered on : 16.11.2017

Nasir Khan, aged about 21 years, S/o Yasin Khan, occupation Jeweller, R/o Gharwala Mohalla, Sahdol, Police Station, Tahsil and District Sahdol (M.P.)

---- Appellant

versus

State of Chhattisgarh, P.S. Nagarnar, District Jagdalpur, Chhattisgarh

--- Respondent

For Appellant	:	Ms. Minu Banerjee, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 25.6.2001 passed in Special Case No.60 of 2000 by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "the Act of 1985"), Bastar at Jagdalpur, by which the Learned Special Judge after holding the accused/Appellant guilty for the possession of illicit contraband article Ganja convicted him under Section 20(b)(i) of the Act of 1985 and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs.5,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 17.11.2000 at about 10:00 a.m., Investigating Officer Sub-Inspector Bhupendra Singh (PW4) received information that one person was standing near Chaukabada Chowk with a rexine bag containing illicit Ganja and

waiting for a vehicle. This information was recorded vide Panchnama (Ex.P1). Then he proceeded for the spot along with police force and witnesses, where the accused/Appellant was found with a rexine bag. A notice under Section 50 of the Act of 1985 was given to the Appellant vide Ex.P3 for his search by a Magistrate or by a Gazetted Officer or by the Investigating Officer himself. The Appellant consented for his search by the Investigating Officer himself. The Rexine bag of the Appellant was searched and 10.500 Kgs. Ganja was found in that bag. Two samples each containing 25 Grams of Ganja were prepared for chemical examination. Ganja was examined, weighed and thereafter seized vide Ex.P8. Spot-map (Ex.P12) was prepared. Dehati Nalishi (Ex.P14) was recorded. Thereafter, he returned to Police Station Nagarnar with the Appellant and the seized Ganja and registered First Information Report (Ex.P15). Seized Ganja and sample packets were handed over to Head Constable (Moharrir) of Malkhana R.L. Saket (PW3) and an acknowledgment thereof (Ex.P11) was obtained. Sample packets were sent for chemical examination vide Ex.P18. Report (Ex.P19) of Forensic Science Laboratory was received in which the samples sent for examination were confirmed to be of Ganja. On completion of the investigation, a charge-sheet was filed against the Appellant under Section 20(b) of the Act of 1985. Charge was framed against him under Section 20(b)(i) of the Act of 1985. He denied the guilt.

3. In order to rope in the Appellant, the prosecution examined as many as 4 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him. He

claimed to be innocent and false implication in the case.

4. After trial, the Learned Special Judge convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the investigation carried out by the prosecution is biased, partial and unfair and that the entire exercise has been completed by Sub-Inspector Bhupendra Singh (PW4). But, in fact, after the raid, the investigation should have been done by some other officer. She submits that after completing seizure part investigation should have been done by an independent officer and not by the Sub-Inspector (PW4) himself. She further argued that there is total non-compliance of the provision of Section 42 of the Act of 1985. She further submitted that independent witnesses, namely, Sadharam (PW1) and Shyamlal (PW2) have not supported the case of the prosecution and have been declared hostile and, therefore, the Appellant cannot be convicted merely on the basis of statement of Sub-Inspector (PW4). Provision of Section 55 of the Act of 1985 has also not been complied with. Impression of the seal was also not sent to the FSL for comparison. Even the provision of Section 50 of the Act of 1985 has not been complied with by the prosecution while making personal search of the Appellant. In support of her submission, she placed reliance on **1992 Cri. L.J. 2342 (Nathiya v. State of Rajasthan), 2006 (2) Acquittal 152 (Kuleshwar Dhruv v. State of Chhattisgarh) and 2011 (4) MPHT 209 (SC) (Narcotics Central Bureau v. Sukh Dev Raj Sodhi).**

6. On the other hand, Learned Counsel appearing for the State supporting the impugned judgment submitted that after receiving the secret information the same was recorded in the daily diary on the date of incident itself and thereafter, separate memo was prepared and immediately forwarded to the City Superintendent of Police, Jagdalpur. He submitted that thereafter the Investigating Officer recorded the grounds of belief as required under the proviso to Section 42 of the Act of 1985. Requirement of Section 42 of the Act of 1985 has duly been fulfilled. According to him, before effecting personal search of the Appellant, he was apprised of his statutory rights available to him for being searched in presence of a Magistrate or a Gazetted Officer or by the Investigating Officer himself and notice under Section 50 of the Act of 1985 was given to him vide Ex.P3. Thereafter, the Appellant gave his consent on the bottom of Ex.P3 to be searched by the Investigating Officer himself. It was further argued that this is not a case of personal search of the Appellant, therefore, Section 50 of the Act of 1985 is not attracted. Other mandatory provisions of Sections 50 and 55 of the Act of 1985 have also been complied with. It was further argued that though independent witnesses Sadhuraam (PW1) and Shyamlal (PW2) have been declared hostile, but they have supported the case of the prosecution to some extent.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. Sub-Inspector Bhupendra Singh (PW4) has stated as to how after receiving the secret information, he completed all the formalities as

required under Section 42 of the Act of 1985, proceeded to the spot, gave notice to the Appellant and made seizures of Ganja and its sample packets vide Ex.P8. After making the seizures, putting impression of seal and making weight of Ganja, etc., Dehati Nalishi (Ex.P14) was recorded. He has further stated that seized Ganja and its sample packets were deposited in the safe custody of Malkhana. They were sent to the FSL for chemical examination and after receiving the FSL report (Ex.P19), a charge-sheet was filed.

9. Though Sadharam (PW1) and Shyamlal (PW2) have not supported the entire case of the prosecution in toto yet they have supported the case of the prosecution to some extent. Especially Sadharam has admitted that 6–7 Kgs. of Ganja was recovered from the Appellant kept in his bag in the police station in his presence, sample packets of the recovered Ganja were also prepared and after weighing the recovered Ganja, seizures were also made. Shyamlal (PW2) has also stated that the police officials had made seizure of Ganja from the Appellant.
10. Head Constable R.L. Saket (PW3) has deposed that on 17.11.2000 itself, the Investigating Officer had handed over him the seized Ganja and its sample packets for keeping the same in the Malkhana and he had received the said articles and kept the same in the Malkhana and had given the Investigating Officer an acknowledgment (Ex.P11) of the received articles.
11. On minute examination of the evidence available on record makes it clear that on 17.11.2000, 10.500 Kgs. of Ganja was found by the

police in possession of the Appellant. After completing all the formalities as required under the law, a charge-sheet was filed against the Appellant and he has rightly been convicted by the Trial Court. This Court finds no force in the argument of Learned Counsel for the Appellant that the investigation done in the case was biased, partial and unfair. Merely because Sub-Inspector Bhupendra Singh (PW4) has completed the entire investigation proceeding from the time of receiving and recording of the secret information, it will not vitiate the trial in any manner. There is absolutely no evidence on record to show that as to how the investigation carried out is biased or partial. It is not required under the law that a person making the entire formalities cannot complete the entire investigation proceeding and the investigation is to be done by some other officer.

12. This Court also finds no force in the argument of Learned Counsel for the Appellant that provision of Section 42 of the Act of 1985 has not been complied with because from the record it is apparent that the secret information was reduced to writing on 17.11.2000, i.e., on the date of incident itself. Thereafter, it was forwarded to the City Superintendent of Police, Jagdalpur vide Ex.P11. The Investigating Officer also recorded the ground of belief as required under the proviso to Section 42 of the Act of 1985 and then proceeded to the place of incident. Even if independent witnesses Sadharam (PW1) and Shyamlal (PW2) have not supported the case of the prosecution, it will also not vitiate the trial because it is the settled legal position that the statement of the Investigating Officer is good enough to uphold the conviction of the Appellant if the same is in accordance with law and inspires confidence of the

Court. In the present case, the statement of the Investigating Officer Sub-Inspector Bhupendra Singh (PW4) makes it clear that he acted in very fair manner after completing all the formalities as required under the law and filed the charge-sheet and in the Court he appeared to be very firm while elaborating the entire incident.

13. There is no force in the argument of Learned Counsel for the Appellant that provision of Section 55 of the Act of 1985 has not been complied with. Seal was affixed on the sample packets of Ganja and while sending the sample packets to the FSL, it was mentioned in the memo (Ex.P18) that the sample packets were sent to the FSL in sealed condition. FSL Report (Ex.P19) shows that the sample packets of Ganja received in the FSL were sealed and the seal affixed thereon were intact.
14. The judgments cited by Learned Counsel for the Appellant are also of no help to the Appellant because in the case in hand all the mandatory provisions have been complied with by the prosecution and there is no infirmity in the finding of the Court below convicting the Appellant as mentioned above.
15. In view of the above discussion, this Court is of the considered opinion that the prosecution has proved its case beyond doubt. Therefore, no interference with the finding of the Court below is called for.
16. In the premises of aforestated, the conviction imposed upon the Appellant is affirmed.
17. So far as sentence part is concerned, the Appellant, out of the total

jail sentence of 3 years, has already undergone about 21 months. Considering the facts and circumstances of the case and that the Appellant is facing the *lis* since 2000, i.e., for about 17 years, I am of the view that the ends of justice would be served if the Appellant is sentenced with the period already undergone by him. Ordered accordingly. The sentence of fine is affirmed.

18. Consequently, the appeal is allowed in part to the extent indicated above.
19. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
20. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE