

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1215 of 2001

Lalchand Sen S/o. Bapu Sen, Aged 25 years, Occupation Agriculture,
R/o. Kherdanta, P.S. Balta District Jalabad Rajasthan

---- Appellant

Versus

State of Chhattisgarh through Police Station Civil Line, Raipur District
Raipur (C.G.)

---- Respondents

For Appellant	:	Ms. Nirupama Bajpai, Advocate.
For Respondent	:	Mr. Lav Sharma, Penal Lawyer

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

Judgement on Board

28.10.2017

- 1) This appeal is preferred against the judgment of conviction and order of sentence dated 16.10.2001 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Raipur, District Raipur in Special Criminal Case No. 96/1999, wherein the trial Court convicting the accused/appellant under Section 18/8 of the Act, 1985 and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

- 2) As per the prosecution case, upon an information in relation to commission of crime, Sub Inspector Rajesh Tiwari (PW-8) left for Shankarnagar area, after making relevant entries in Rojnamcha Sanha No. 605(Ex.P-18). Thereafter, he went to bus stand of Raipur, where he received information that some persons are sitting at a particular place holding air-bags, in which, there is suspicion of keeping narcotic material. They were located and after compliance of due provisions of N.D.P.S. Act, when the air-bag of the appellant was searched, it was found that opium in quantity of 4 Kg was there. Seizure memo of the said article was prepared. Sample of the seized articles were also taken and packet of the samples as well as remaining articles both were sealed. The appellant was taken into custody and was brought to police station. Seized material was deposited in Malkhana of Police Station, Raipur and thereafter it was sent for chemical examination to Forensic Science Laboratory, Raipur through memo of Superintendent of Police and as per report of laboratory the test was positive containing 4.10% morphine. All legal formalities were performed by the Police Officers, the matter was investigated and the charge sheet was filed against the accused/appellant in the Court of Special Judge NDPS Act, 1985, wherein the Special Judge NDPS Act framed charges under Section 18 read with Section 8 of the NDPS Act, 1985, to which the appellant did not plead guilty. The Special Judge, NDPS Act, 1985 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 judgement convicted and sentenced the accused/appellant as mentioned above.

- 3) Learned counsel appearing for the accused/appellant submits that the Panch witnesses namely Syed Sadil Ali (PW-5) and Awadesh Mishra (PW-6) have not supported the version of Police Officer Rajesh Tiwari (PW-7) and they turned hostile, therefore, the version of Police Officer is not reliable. She further submits that there is violation of Sections 50, 55 and 57 of the NDPS and the judgment of trial Court is not sustainable and the seized articles was not kept in safe custody in Malkhana of Police Station under impression of seal and it is doubtful whether the same articles which is seized is sent for chemical examination.
- 4) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
- 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 7 witnesses. The appellant did not examine any witness in his defence.
- 7) Rajesh Tiwari (PW-8) is the Investigating Officer deposed that upon information he swung into action and visited the place of Shankarnagar area, thereafter he found that the appellant carrying bags and he informed the appellant of his right for search by any

Gazetted Officer or Executive Magistrate or he can be searched by him. He issued notice Ex.P-6 to the appellant and he consented to be searched by him vide (Ex.P-16), therefore, he searched the appellant and opium like substance was found in his air-bag. In presence of independent witnesses he prepared Panchnama as per Ex.P-8. After search one Mona Madasi took weight of seized article and which comes out 3 Kg and 200 grams. As per the statement of Rajesh Tiwari (PW-7) sample of 25-25 grams were prepared and remaining part of the articles were sealed in separate packet. He further deposed that he affixed specimen seal in the packet and the same was handedover to head constable Urmila Prasad Pandey, Malkhana Moharrir of Police Station who took the custody of the said article and after made entries in the register of Malkhana at Sr. No. 127 as per Ex.P-5 and the same was sent for chemical examination to Forensic Science Laboratory, Raipur, as per memo of Superintendent of Police, Raipur and the entry was made in Rojnamchasanha and as per report of Laboratory Ex.P-25 the test was found positive containing 4.5% of morphine. Version of this witness is unshaken during searching cross-examination. Evidence of Rajesh Tiwari (PW-8) regarding weight of seized articles was supported by statement of Mona Madasi (PW-3). Head constable Urmila Prasad Pandey who took the articles and kept it in Malkhana of Police Station. Kishore Soni (PW-2) is a head constable who prepared all the documents regarding sending information to City Superintendent of Police, Raipur. Ramgopal Sharma (PW-1) is constable who received the said articles from

Police Station and sent it to Forensic Science Laboratory, Raipur. It is submitted that Panch witness Awadesh Mishra (PW-6) is not supported the evidence of prosecution but so far as legal position in this regard is concerned, it has been settled that if the evidence of the investigating officer is found to be trustworthy and dependable and nothing material has been brought to discredit his evidence in the cross-examination, the Court can safely act on the statement of Police Officer. The Court seeks corroboration as a matter of caution and not as a matter of a rule.

- 8) In the present case all the legal formalities were recorded in Rojnamchasanha and other relevant documents which is done in discharge of duty and it is presumed that the official act have been discharged regularly and findings of the trial Court cannot be disturbed only on the ground that the Panch witnesses has not supported the version of the Police Officer. There is nothing on record to discard the report of Forensic Science Laboratory, Raipur and all the formalities have been done according to law and there is nothing to discard the version of the prosecution witnesses when Investigating Officer informed about the right of the appellant and all the articles were seized and kept in safe custody of Malkhana of Police Station and it was sent for chemical examination and again when the seizure and other formalities have been done according to the provisions of Act, it cannot be said that any provision is flouted during the investigation, quantity was not found up to the commercial quantity.

- 9) The trial Court convicted the appellant under Section 18 /8 of the NDPS and the same is not liable to interfered by this Court with invoking the jurisdiction of the appeal, therefore, conviction of the appellant is hereby affirmed.
- 10) Heard on sentence part, the appellant has already suffered jail sentence awarded by the trial Court and again he suffered further jail sentence awarded in default stipulation of fine, his sentence is also not required to be interfered with by this Court. For the foregoing reason, the appeal fails and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh