

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 130 of 2008

Sahasram Choudhari, S/o. Mahipal Choudhari, aged about 35 years, R/o.
Village Majhgawan, P.S.- Pendra, District -Bilaspur (CG)

--Appellant.

VERSUS

The State of Chhattisgarh, Through : P.S. Pendra, District -Bilaspur (CG).

----Respondent

For Appellant : Ms. Sangeeta Mishra, Advocate
For Respondent/State : Mr. Samir Behar, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

24/04/2017

1. Being aggrieved with the judgment of conviction and order of sentence dated 22-9-2007, passed by the Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985, Bilaspur, in Special Criminal Case No. 14 of 2007, whereby the accused/appellant has been convicted under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "the Act, 1985") and is sentenced to undergo R.I for ten years and to pay fine of Rs.1,00,000/-, in default of payment of fine, to further undergo RI for one year, the appellant has preferred the appeal under Section 374 (2) of the Code of Criminal Procedure.

2. As per prosecution case, on 10-5-2007 at about 4.40 pm Station House Officer, Police Station -Pendra received a secret information over telephone that at village Majhgava, the appellant had kept cannabis in his house for sale, thereafter Mukhbir Panchnama (Ex.P/2) was prepared under Section 42 (2) of the Act, 1985, entry thereof was made in Rojnamcha Sahna vide Ex.P1/C and information was sent to Additional Superintendent of Police Gourela through Constable vide Ex.P/7. Subsequent to that, Police party proceeded towards the village Majhgava and after reaching there, notice under Section 160 of Cr.P.C., (Ex.P/6) was served to Panch witnesses namely Jaikaran and Padmesh Singh and subsequently, memorandum (Ex. P/8) was prepared that the permission for search and seizure could not be obtained under Section 42(2) of the Act of 1985 and original was sent to Additional Superintendent of Police and thereafter notice under Section 50 of the Act, 1985 vide Ex.P/9 was served to the accused and consent was obtained to search the house vide Ex.P/10. After obtaining permission, the raid was conducted and from the godown of the appellant, 12 packets of cannabis were recovered vide Ex.P/15. After seizure of articles, the cannabis were physically examined vide Ex.P/16 and weighment of the cannabis were made vide Ex.P/18, which was found to be 98.750 K.G. and thereafter 100 -100 grams of cannabis were taken out as sample from the seized packets of cannabis vide Ex.P/19. Total 12 packets of samples of cannabis were made, sealed and seized vide Ex.P/20. In respect of house, the electricity bill and documents were also seized vide Ex.Art/A. Thereafter the first

information report was registered against the appellant under Section 20(b)(ii)(c) read with Section 8 (c) of the Act, 1985 vide Ex.P/24. The sealed packets containing cannabis were kept in Malkaha vide Ex.P/25 and seized cannabis were sent for chemical examination to Forensic Science Laboratory (FSL), Raipur vide Ex.P/30 and a report thereof was received vide Ex.P/32. According to FSL report, the seized cannabis which were sent for chemical examination were found to be positive that of Cannabis.

3. After completion of investigation, charge-sheet was filed. During the course of trial, the appellant claimed to be tried and denied the offence.
4. The prosecution, in order to prove the charge against the accused/appellant, examined as many as seven witnesses i.e., R.L. Bada as (P.W.-1), Vinod Kumar, Patwari as (P.W.-2), Padmesh Singh as (P.W.-3), Manoj Kumar as (P.W.-4), Jaikaran as (P.W.-5), Head Constable Ashok Kumar Dhruv as (P.W.6) and constable, Rafiq Khan as (P.W.-7). The trial Court after evaluating the entire evidence led by the prosecution and the report of the FSL, convicted and sentenced the appellant as aforementioned.
5. Ms. Sangeeta Mishra, learned counsel appearing for the appellant would submit that mandatory provisions of Section 50 of the NDPS Act have not been immaculately followed. In this case seizure of cannabis and weighment would show that there has been material difference about weighment. It is stated that as per Ex.P/25, though

the prosecution claims to have sized 98.750 grams of cannabis, but apart from that 12 packet were further seized which were sent to Malkhana which would make the entire weighment of cannabis 99.950 grams. It is further submitted that as per Annexure P/34, only 97.550 grams of cannabis were deposited. Therefore, the cannabis which were actually seized from the appellant cannot be said to be of the appellant. It is further submitted that as per statement of Ashok Kumar Dhruv (P.W.-6), 97.550 grams of cannabis were deposited in Malkhana which would show that there has been serious discrepancy about weighment. It is further submitted that the house which was claimed to be owned by the appellant was the joint ownership of the house, therefore, the benefit of doubt should be given to the appellant. She would further submit that the Special Judge, while convicting and sentencing the appellant, has not considered the relevant aspects of the matter and thereby committed illegality, therefore the order dated 22-9-2007 passed by the Special Judge be set aside and the appellant be acquitted of the charges.

6. *Per contra*, Shri Sameer Behar, learned Panel Lawyer for the State opposed the arguments advanced by learned counsel for the appellant and supported the judgment passed by the Special Judge.
7. I have heard learned counsel for the parties at length and have also perused the impugned judgment including the record of the Special Case.

8. The evidence would show that at very inception on 10.05.2007 when the information was received by PW-1, who is the Station House Officer of Police Station - Pendra that the present appellant has kept Cannabis in his house for sale, it was registered in the Rojnamchasanha (Ex.P/1). Subsequently, the same was recorded in writing and it was sent to immediate superior and Panchnama was recorded by Ex.P/2. Thereafter, in order to avoid escape of accused in case for paucity of time to obtain search warrant it was recorded and the report was sent in compliance of Section 42 (2) by Ex.P/5. The police party thereafter went for raid and after reaching the village, seizure witnesses namely Jaikaran and Padmesh Singh were summoned, which was also recorded by Ex.P/6. The information in this regard to the higher officer i.e. Additional Superintendent of Police, Gaurela was sent by Ex.P/7 and thereafter since the arrest warrant could not be procured, the same was recorded by Ex.P/8 in compliance of Section 42 (2) of the N.D.P.S. Act.
9. P.W.-1, further proved the notice given to the appellant - Sahasram Choudhari under Section 50 of the N.D.P.S. Act on 10.05.2007 and the consent was recorded and he was given option that he may get himself examined by any gazetted officer or Magistrate and the appellant agreed to get himself examined by police officers. The document in this regard was marked as Ex.P/10.
10. The Investigating Officer (P.W.1) and the witnesses present at the spot were searched and examined. The police official who went

along with the P.W.-1 for raid also got themselves examined and no narcotics drugs or incriminating articles were found in their possession. The fact that the officers and witnesses after examination were not found in possession of incriminating article was recorded by Ex.P/11, Ex.P/12 and Ex.P/13. Thereafter, the house of the appellant was raided and searched. The house Talasipanchnama was marked as Ex.P/14. On having searched, 12 packets inside the paddy were found, which was recorded in presence of the witnesses Jaikaran and Padmesh Singh Singh. Having initially found it to be a Cannabis, the same was recorded in Panchnama by Ex.P/15 and at immediate inspection by smell, burning and by rubbing, prima-facie it was found to be Cannabis, which was recorded in Ex.P/16. Thereafter, in order to make weighment of the goods, the beam balance was brought and weight of 5.kg, 2 kg, 1 kg, 500 gram, 200 gram, 100 gram and 50 gram were verified, which were found to be correct and the beam balance was also verified. Having found it on order, it was recorded by Ex.P/17.

11. Thereafter, 12 packets which were found all were of different weight and out of all 12 packets, 100 – 100 grams material were taken from each packets and 12 samples packets were prepared, and the other Cannabis were also weighted, which was found to be of 97.550 kg. and total Cannabis was found to be of 98.750 kg, which was recorded by Ex.P/18. The seizure of the samples and the seizure was recorded by Ex.P/19 and Ex.P/20 and thereafter, the electricity

bill of the house of the appellant was recorded with consumer number 10011236, which is found to be in the name of the appellant.

12. Subsequent to that after coming back to the police station, it was recorded in Rojnamchasanha which is proved as Ex.P/23 (C) and the case under Section 20(B) of N.D.P.S. Act was registered, which is marked as Ex.P/24. The document Ex.P/25 would show that sealed packet "Jumla 98.750 kg" and sample of 100 grams of 12 packets were handed over to Ashok Kumar Dhruw to keep it at Malkhana. The said factum of handing over of Cannabis is proved by Ex.P/25, then the acknowledgment of the said Cannabis having received is proved as Ex.P/26.
13. After recording the entire proceeding, the information was sent to Additional Superintendent of Police, Gaurela by Ex.P/29. The document Ex.P/29 also records that the said information was received with seal of the Additional Superintendent of Police, Gaurela on 11.05.2007. Thereafter, the said Cannabis were sent to the FSL by a memo dated 14.05.2007 vide Ex.P/30, which was received by the FSL, Raipur on 15.05.2007 by Ex.P/31. The said packets which were sent to FSL were found to be the Cannabis and the report of the FSL is marked as Ex.P/32, thereby the positive report of the FSL was given.
14. Cross-examination of the P.W.-1, who is the Investigating Officer would show that nothing has come on record to rebut such evidence

that he in the presence of the witnesses has seized the Cannabis from the possession of the appellant. Vinod Kumar Jagat (P.W.-2) in his statement has stated that the place of seizure of Cannabis is the house which belonged to the appellant – Sahasram Choudhari and he has given a memo to this effect as per document Ex.P/33 according to the revenue records. In the cross-examination, a suggestion was given to this witness that the house belonged to the Sahasram Choudhari, the appellant, therefore, with respect to ownership of house, the appellant himself has proved the same.

15. Manoj Kumar (P.W.-4) from whom beam balance and weight items were taken has stated that police from his shop had taken out weight items of 50 grams to 10 kg., but has not supported the fact that weighment was made before him. He admits his signature on Ex.P/17 and Ex.P/18. The document Ex.P/17 pertains to verification of beam balance and the document Ex.P/18 pertains to Taulpanchnama. Therefore, part of the document was admitted by P.W.-4, which was corroborated by the P.W.-1. Subsequent documents would show that the said Cannabis having been seized were part of it was sent to Malkhana and the document Ex.P/25 would purports that total 98.750 kg Cannabis was seized and minus of 12 packets each of 100 grams would make it 97.550 kg, which was seized and weighment were made accordingly as per Ex.P/19. Therefore, there has been no discrepancy as to the fact of 1 kg and 200 grams which was taken out from main packets as it tallied to each other that after taking out the samples from 12 packets,

97.550 remained in the larger packets.

16. In the instant case, as appears that seizure witnesses namely Padmesh Singh (P.W-3) and Jaikaran (P.W.-5) have not directly supported the case of the prosecution, however, examining their entire statement would show that both of them have admitted their signatures at Ex.P/6, Ex.P/8, Ex.P/9, Ex.P/10, Ex.P/11, Ex.P/12, Ex.P/13, Ex.P/14, Ex.P/15, Ex.P/16, Ex.P/17, Ex.P/18, Ex.P/19, Ex.P/20 and Ex.P/21. No explanation has been given by these witnesses as to how the signatures exists in respect of the said documents. No cross-examination was made to rebut or suggestions were given to these witnesses. On the contrary, these documents have been proved by Investigating Officer of the case. Investigating Officer (P.W.-1) having proved the raid and seizure and therefore, in absence of any plausible evidence in rebuttal the same becomes admissible and acceptable in evidence.
17. The Supreme Court in case of ***Kashmiri Lal Vs. State of Haryana***¹ has laid down that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to reliable and trustworthy, the Court can definitely act upon it. In this case, scrutinizing all the evidence by the Court it goes to point out why the evidence of police officer P.W.-1 can be relied upon and the

¹ 2013 CRI. L.J. 3036

testimony of officers can not be discarded and appears to be absolutely trustworthy in the facts of this case.

18. Therefore, after due consideration of the documents, which are exhibited and on appreciation of evidence and evaluating the statement of all the witnesses as a whole, I am of the considered opinion that no ground is made out warranting interference with the judgment of conviction and sentence awarded to the appellant.
19. In view of the forgoing discussions, the appeal has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge