

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 290 of 2007**

Amol Das S/o. Charan Das, Aged about 30 years, R/o. Village
Kachanda, Thana- Sivrinarayan, District Janjgir Champa (C.G.)

---- Appellant

Versus

State of Chhattisgarh through Police Station Sivrinarayan, District
Janjgir Champa (C.G.)

---- Respondents

For Appellant	:	Mr. R.M. Solapurkar, Advocate.
For Respondent	:	Mr. Anil S Pandey, Govt. Advocate

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

Judgement on Board

27.10.2017

- 1) This appeal is preferred against the judgment of conviction and order of sentence dated 04.04.2007 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Janjgir, Sessions- Division Janjgir in Special Criminal Case No. 28/2006, wherein the trial Court convicting the accused/appellant under Section 20 b (i)(ii) B of the Act, 1985 and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs.10,000/-, in default of payment of fine, to further undergo rigorous imprisonment for two years.

- 2) As per the prosecution case, on 11.07.2004 Station House Officer, Police Station Sivrinarayan received an information that the appellant /accused is selling illegal contraband Ganja in his house situated at village Kachanda. After receiving information, the Police swung into action and rushed to the house of the appellant and searched the house in presence of independent witnesses and found Ganja in three different plastic bags. The seized Ganja was measured and found 11 KG and 100 grams of Ganja is the plastic bags. Sample of 100 grams of each packets were separated and rest of Ganja was sealed in different packet. Seizure of Ganja was prepared and it was kept in Malkhana of Police Station, Sivrinarayan. Thereafter, the Ganja was sent for examination to Forensic Science Laboratory, Raipur for chemical examination where after examination seized Ganja is found to be Cannabis/ Ganja. All legal formalities were performed by the Police Officers and 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 as mentioned above 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 seizure witnesses have not supported the case of the prosecution, therefore, seizure of Ganja from the appellant is in shadow of doubt. He submits that the Ganja was seized from the house and not from the exclusive possession of the appellant so it cannot be said that the appellant was in conscious possession of Ganja. He further submits that no documents is produced by the prosecution for the said house that it is owned by the appellant and he was sole owner of the house. Lastly, he submits that the weight of Ganja was bout 10 Kg which is less than commercial quantity and the appellant has suffered more than 3 years and 6 months jail sentence and he has already paid the entire find amount, therefore, he be released after awarding the sentence for the period already undergone by him.
- 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 9 witnesses. The appellant did not examine any witness in his defence.
- 7) K.S. Rathiya (PW-9) is the Investigating Officer and is the star witness of the prosecution who conducted the search, as per his statement he received information on 11.07.2004 at about 8.45 AM

that the appellant/accused is selling Ganja. Upon that information he reached to village Kachanda with two witnesses namely Bundram and Rameshwar who were called for search of the appellant. He further deposed that he has informed the appellant of his right of search by any Gazetted Officer or Executive Magistrate or he can be searched by him. The appellant consented to his search by the Police Officer thereafter he conducted search of the house of the appellant and found contraband Ganja in three plastic bags. After seizure he prepared panchanama (Ex.P-10) and documents (Ex.P-12) regarding weight of seized articles. K.S. Rathiya (PW-9) further deposed that he separated 100 grams of Ganja in each packets as sample and the same was sealed in his presence and again he sealed the rest of Ganja in separate sealed packets and specimen of seal was affixed in all the packets. He deposed that information regarding seizure was sent to Sub Divisional Officer (Police) Janjgir as per Ex.P-17 again the information regarding offence was sent to Judicial Magistrate. K.S. Rathiya (PW-9) further deposed that the separate sealed packets were prepared by him as (Ex.P-13) and seized articles were sent for examination to Forensic Science Laboratory, Raipur. Statement of this witness is unshaken during the cross examination and there is nothing on record that the house was not in possession of the appellant from where the contraband Ganja were seized. Statement of this witness is supported by the version of constable Kanhaiyalal (PW-4). Again the statement of K.S. Rathiya (PW-9) is supported by head constable Parasram Khunte (PW-2) who

received contraband Ganja and keeping safe in Malkhana of Police Station Sivrinarayan.

- 8) Parasram Khunte (PW-2) deposed that he has made entry of keeping the alleged contraband Ganja in Malkhana at Malkhana register at Sr. No. 157 and it was duly proved. Vidhyasagar (PW-3) Constable is a person who took Ganja as per memo of Superintendent of Police, Janjgir, and he submitted it to Forensic Science Laboratory, Raipur. He deposed that all the articles were sent in sealed condition and he received acknowledgment as per Ex.P-4 and Ex.P-5. As per report of Forensic Science Laboratory Ex.P-25, in the sealed packet test of ganja was found positive.
- 9) True, it is that Rameshwar Yadav (PW-5) and Ujagar Kaiwarth (PW-8) have stated regarding their signature and they have not supported the factum of seizure of Ganja but if they were not present at the time of incident, their version is not credible and the evidence of Inspector K.S.Rathiya (PW-9) and other prosecution witnesses cannot be brushed aside. There is nothing on record that the appellant was not residing in the house from where the packets of Ganja was seized, therefore, it can be presumed that the appellant was in conscious possession of Ganja and seized Ganja were subjected to balance and its weight was found 11 Kg and 100 grams as per statement of Rameshwar Yadav (PW-5) and the quantity of 20 Kg of Ganja is more than commercial quantity and quantity of 1 KG of Ganja is less than small quantity. The contraband Ganja of 11 KG and 100 grams seized from the appellant does not fall into two categories and for that reason the

offence falls under Section 20 b (i)(ii) B of the NDPS Act 1985 and for that provision of rigorous imprisonment for a term which may be extended to 10 years is applicable, the trial Court convicted the appellant for the said offence and looking to the evidence adduced by the prosecution conviction is not liable to be interfered with by this Court. The conviction of the appellant/accused is hereby confirmed.

- 10) So far as quantum of sentence is concerned, keeping in view the nature of offence and considering the fact that the appellant has paid the fine amount imposed by the trial Court as receipt is on record and he has suffered more than 3 years and 6 months jail sentence. In the opinion of the Court the sentence imposed on him be reduced to the period already undergone by him while maintaining conviction and the fine amount.
- 11) Consequently, the appeal is partly allowed. Conviction imposed on the appellant by the trial Court under Section 20 b (i)(ii) B of the NDPS Act 1985 is hereby affirmed, but the sentence imposed on the appellant by the trial Court is modified and instead of RI for 7 years, he is sentenced to imprisonment for the period already undergone by him. However, as regards sentence of fine, the same is intact.
- 12) The appellant is reported to be in jail, therefore, no fresh order of his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
 JUDGE