

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 790 of 2010**

Mahesh Mandal S/o Gokul Mandal, R/o village Balimela, PS  
Balimela, District Koraput, (Odisha)

**---- Appellant**

**Versus**

State of C.G. through PS - Durgukondal, District North Bastar, Kanker,  
C.G.

**---- Respondent**

|                          |   |                               |
|--------------------------|---|-------------------------------|
| For the Appellant        | : | Shri Parag Kotecha, Advocate  |
| For the Respondent/State | : | Smt. Shobha Kashyap, Dy. G.A. |

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

**Judgment On Board**

**11/11/2017**

Since the counsel engaged by the Legal Aid Department is not present in spite of the matter being called on two occasions, this Court took the assistance of Shri Parag Kotecha, advocate present in the court for final disposal of the appeal.

**2.** Present is a jail appeal. The appellant stands convicted for the offence punishable under Section 20 (b) (ii) (B) of Narcotic Drugs and Psychotropic Substance Act, 1985 and sentenced to undergo RI for four years with fine of Rs.10,000/-, in default of payment of fine, to further undergo RI for six months vide order dated 08.09.2010 passed by the Special Judge (NDPS Act), North Bastar, Kanker (CG) in Special Case No. 01/2010.

**3.** Case of the prosecution, in brief, is that the Police authorities during the course of search of the vehicles passing that area on 23.11.2009 at 9.15 p.m. stopped a truck bearing registration No. CG04 ZC 0437 coming from Bhanupratappur. In the course of search, it is said that the appellant was found carrying 8.800 Kg. Ganja in a bag in his possession. After completion of all mandatory statutory requirements under the provisions of NDPS Act, the

appellant was arrested and a case was filed against him before the Special Court, NDPS Act, North Bastar Kanker for the offence under Section 20 (b) (ii) (B) of NDPS Act.

4. During the course of trial prosecution examined as many as 5 witnesses. No witness was examined on behalf of the defence. After conclusion of trial, the Court below found the appellant guilty for having committed the offence under Section 20 (b) (ii) (B) of NDPS Act and sentenced him to undergo RI for four years with fine of Rs.10,000/- with default stipulation leading to the filing of the present appeal.

5. After due consideration of records, Shri Kotecha, counsel appearing for appellant submits that the prosecution in the instant case has not been able to prove its case in as much as the seizure was made from an open place where there was access to many people and therefore the exclusive possession part has not been established. So the prosecution has not been able to show the mandatory compliance as is required under Sections 41 and 50 of the NDPS Act. From the record it further reflects that in the truck there were around 7 persons travelling at the time of accident and the prosecution has not conclusively been able to prove whether the bag from which the alleged contraband was seized was that of the appellant or not. For all these reasons, counsel for the appellant prayed for setting aside of the judgment of conviction and granting of acquittal to the appellant.

6. State counsel, on the contrary, opposing the appeal submits that it is a case where the prosecution has been able to establish its case beyond all reasonable doubt by leading substantial concrete evidence before the Court below with which it could be easily reach to the conclusion of the matter having been proved beyond all reasonable doubt. Thus, prayed for rejection of the appeal upholding the judgment of conviction.

7. Having heard the contentions put forth by the counsel appearing on either side and on perusal of the record it clearly reflects that the prosecution

has examined PW-2 Ram Singh Baghel the driver of the truck who in his deposition has very categorical term supported the case of the prosecution. PW-2 being an independent witness has supported the case of the prosecution so far as the statutory compliance as is required during the search proceeding and in the course of seizure of the contraband. The statement of the driver PW-2 stands fully corroborated by PW-4 the Investigating Officer D. K. Markam who has also specifically given details of the entire proceedings that were drawn as are required under the NDPS Act to prove the case of the prosecution. There is not much from the cross-examination of this I.O. with which a doubt could have been created in the mind of the Court.

8. In the given facts and circumstances of the case, particularly taking into consideration the evidence of PW-2 the driver of the truck and PW-4 the Investigating Officer, this Court is of the opinion that the offence under Section 20 (b) (ii) (B) of NDPS Act against the appellant stands fully proved beyond all reasonable doubt. Further with the aforesaid evidence on record it cannot be said that the Court below has in any manner wrongly appreciated the evidence or the finding arrived at to be perverse. Thus, the jail appeal filed by the appellant being devoid of merits deserves to be and is accordingly dismissed.

9. The report which has been furnished by the State Counsel shows that the appellant in the instant case has completed his jail sentence and has been released from jail on 23.11.2013. In the given facts, no further step is required to be taken on the appeal being dismissed. This Court renders a word of appreciation to Shri Kotecha for rendering the necessary assistance for the disposal of this appeal.

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