

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1621 of 2015**Judgment Reserved on : 23.2.2017Judgment Delivered on : 28.4.2017

1. Govind Prasad, S/o Chhatlal, aged about 32 years, R/o Delhi P.S. Mangava, District Riva (Madhya Pradesh)
2. Munesh @ Chhathlal, S/o Chhotelal, aged about 30 years, R/o Delhi P.S. Mangava, District Riva (Madhya Pradesh)

---- Appellants**versus**

State of Chhattisgarh through the Station House Officer, Police Station Kondagaon, Civil and Revenue District Kondagaon (Chhattisgarh)

--- Respondent

For Appellants	:	Shri Manoj Kumar Jaiswal, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla**C.A.V. JUDGMENT**

1. Being aggrieved by the judgment dated 19.10.2015 passed in Special Sessions Trial No.3 of 2013 by the Additional Sessions Judge, Kondagaon, District Kondagaon, the accused/Appellants have preferred the instant appeal under Section 374(2) of the Code of Criminal Procedure. By the impugned judgment, the learned Additional Sessions Judge has convicted and sentenced each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act')	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 3 years

2. Case of the prosecution, in brief, is that on 9.8.2010 at 7:30 a.m., Sub-Inspector of Police Station Kondagaon Manoj Prajapati (PW-5) received an information from an informant that Ganja was being transported in a white Maruti Zen Car bearing registration No.UP 70 AR 6705 from Jagdalpur to Raipur. Witnesses were called and this information was registered in Rojnamcha Sanha No.5 (Ex.P-20) and thereafter they, after making registration of an entry into Rojnamcha Sanha No.6 (Ex.P-21) relating to proceeding for search, proceeded from the police station along with an electronic weighing machine and other articles relating to investigation for search of the car. Since an urgent action was needed, Sub-Inspector Manoj Prajapati (PW-5) sent an information to the office of his superior officer Sub-Divisional Officer (P) regarding non-obtaining of a search warrant. On that date, the S.D.O. (P) was on leave and the Station House Officer was out of the police station. Sub-Inspector Manoj Prajapati (PW-5) along with the search party/staff and the independent witnesses reached the place of occurrence Kokadinala Tekri and made blockade there.
3. At about 11:45 a.m., a white Maruti Zen Car bearing registration No.UP 70 AR 6705 was seen to be coming from towards Jagdalpur, which was indicated to be stopped, but the car did not stop and the driver of the car dashing the stopper/barrier drove the car ahead. The car was chased by Sub-Inspector Manoj Prajapati (PW-5) along with the search party in a Marshall Jeep. On this, the car turned towards Bade Kanera and after going 5 Kilometres away dashed with a stone and stopped there. Soon after stopping of the car, three persons came out of the car. Out of the three, two persons, i.e., the accused/Appellants were caught by the search

party, but one person succeeded to flee from there. On being inquired, both the Appellants told their names and they also told the name of fleeing person to be Ramyash Patel, son of Ram Niranjan Patel, resident of Post Delhi, Police Station Mangawan, District Rewa (Madhya Pradesh).

4. Thereafter, informing the Appellants about the information received from the informant about transportation of Ganja, they were also informed about their rights to be searched. The Appellants were searched according to law. On making search of the car, 12 bags filled with some material were found therein. The material contained in those bags was suspected to be Ganja. The material was recovered and action of identification of that material was taken in which the material was found to be Ganja. The Appellants were given notice (Ex.P-27) to show documents for keeping Ganja with them. In reply to the notice, they stated in the notice itself that they did not have any such document. Thereafter, all the bags were opened and the material kept therein were mixed with each other. Thereafter, each bag was weighed separately and after weighing the weight of the total material, the material was found to be total 78.900 Kilograms. 100-100 Grams Ganja from each bag was taken out for the purpose of preparation of sample packets and two sample packets of 50 Grams each were prepared from each bag. The bags were marked as Ex.A to Ex.L and the sample packets were marked as A1, A2 onwards and L1, L2 onwards accordingly. The whole quantity of Ganja was seized.
5. The Appellants and the seized articles were brought to the police station and return Rojnamcha Sanha was registered. Thereafter, Crime No.159 of 2010 was registered. For keeping the seized

articles safe, they were handed over to Thana Moharrir. The papers recovered from the Maruti Zen Car were seized. Thereafter, a detailed report of the action taken was sent to S.D.O. (P.), Kondagaon vide Ex.P-24. Statements of witnesses were recorded. The sample packets of the seized Ganja were sent to Forensic Science Laboratory, Raipur for chemical examination. The FSL Report is Ex.P-32 in which it was found that the material sent for chemical examination was Ganja.

6. After completion of the investigation, a final report was prepared and filed against the Appellants. The Trial Court framed charge under Section 20(b)(ii)(C) of the Act against the Appellants. The Appellants denied the guilt. Statements of prosecution witnesses were recorded. Statements of accused/Appellants were recorded under Section 313 Cr.P.C. in which the Appellants have taken defence that the Appellants were brought from Kondagaon Bus Stand. They were going in a bus to Jagdalpur. No Ganja was seized from them. They were not aware anything about vehicle No.UP 70 AR 6705.
7. The Trial Court, after appreciation of the evidence available on record and hearing arguments on behalf of both the parties, convicted and sentenced the Appellants as mentioned above in first paragraph of this judgment. Hence, this appeal.
8. Learned Counsel appearing for the Appellants argued that the judgment of conviction and sentence passed by the Trial Court is contrary to the facts and law. Kalim Ahmed (PW-1) has not supported the case of the prosecution. Other important witnesses of the prosecution are related to the police. There is no evidence

against the Appellants about their involvement in the offence in question. Provisions of Sections 42, 43, 44 and 45 of the Act have not been complied with in the investigation. Therefore, the conviction and sentence imposed upon the Appellants by the Trial Court may be set aside and the Appellants may be acquitted of the charge framed against them.

9. Learned Counsel appearing for the State/Respondent submitted that on the basis of the evidence led by the prosecution and the Ganja seized from the Appellants, the offence is made out against them. The defence taken by the Appellants that they had been brought from Kondagaon Bus Stand and have been falsely implicated in the case has not been proved by leading any evidence. They have not led evidence of any witness in this regard. Therefore, the instant appeal preferred by the Appellants may be dismissed.

10. Following questions arise for adjudication in this appeal:

- (i) Whether the Appellants were illegally carrying 78.900 Kilograms of Ganja in Vehicle No.UP 70 AR 6705 from Kokadinala Tekri, Kondagaon on 9.8.2010 at 11:45 a.m.?
- (ii) Whether the Appellants were brought from Kondagaon Bus Stand and implicated in the case falsely?
- (iii) Whether the conviction and sentence imposed upon the Appellants deserve to be set aside?

11. The prosecution examined Kalim Ahmed (PW-1) and Mohammed Imran (PW-2) as independent witnesses relating to seizure and other proceedings. Constable Garanju Netam (PW-3) is the witness relating to Weight Certificate (Ex.P-18). Head Constable

Naresh Kumar Sahu (PW-4) is the witness relating to the Register for Seized Articles (Ex.P-19). Sub-Inspector Manoj Prajapati (PW-5) is the Investigating Officer. Head Constable Umashankar Netam (PW-6) is the witness relating to the information (Ex.P-29) received in the office of the S.D.O. (P.).

- 12.** The most important witness in this case is Sub-Inspector Manoj Prajapati (PW-5), who, on 9.8.2010 at 7:30 a.m., had received the information that Ganja was being transported in a white Maruti Zen Car bearing registration No.UP 70 AR 6705 from Jagdalpur to Raipur. This information was entered into Rojnamcha Sanha No.5 (Ex.P-20). Thereafter, at 7:40 a.m., he instructed Constable Garanju Netam (PW-3) to bring an electronic weighing machine and two independent witnesses. Thereafter, an entry of departure for the search of the Appellants was made into Rojnamcha Sanha No.6 (Ex.P-21) and they along with two independent witnesses Kalim Ahmed (PW-1) and Mohammed Imran (PW-2) and the electronic weighing machine left for the search at about 8.15 am. On return to the Police Station Kondagaon its entry was registered into Rojnamcha Sanha No.7 (Ex.P-22).
- 13.** According to Sub-Inspector Manoj Prajapati (PW-5), on 09.08.2010 itself, at about 8.30 am, Mukhbir Panchnama (Ex.P-1) was prepared in front of the witnesses on which he and the witnesses put their signatures. The witnesses were informed about the information given by the informant and regarding this Rojnamcha Sanha No.8 (Ex.P-23) was registered.
- 14.** Sub-Inspector Manoj Prajapati (PW-5) has further deposed that on 09.08.2010 itself, he had sent a memo (Ex.P-24) to S.D.O.(P)

regarding the information received by him about transportation of Ganja. This memo was sent by hand with Constable No. 850, Afzal Khan whose departure was registered into Rojnamcha Sanha No. 9 (Ex.P-25). At 8.45 am, a document (Ex.P-2) was prepared before the witnesses regarding non-availability of search warrant. Thereafter, at 9 am, due to getting the Station House Officer, Police Station Kondagaon involved into investigation of other offence and the S.D.O.(P.) being on leave, he along with the staff of the police station, the two witnesses and the material required for search and seizure, left in two acquired vehicles, a Bolero bearing registration No.CG 04 HB 9981 and a Marshal bearing registration No.CG 03 1176 for making blockade on Jagdalpur Road, for which an entry was registered into Rojnamcha Sanha No.10 (Ex.P-26).

- 15.** Sub-Inspector Manoj Prajapati (PW-5) has further deposed that he along with the search party reached the Forest Naka (barrier) and started checking of vehicles coming from towards Jagdalpur. At about 11.45 am, a white Maruti Zen Car bearing registration No. UP 70 AR 6705 was seen to be coming from towards Jagdalpur which was tried to be stopped, but having seen the police, the car driver did not stop the car and drove the car ahead after dashing the stopper/barrier. The car was chased by the police. After driving away for about 5 Kms from the blockade, the car dashed with a stone and stopped, out of which three persons came out and began to flee. Out of the three, two persons were caught by the police, but, one person succeeded to flee from there. The two caught persons are the Appellants/accused. Name of the fled person was told by the Appellants to be Ramyash Patel.

- 16.** The Appellants were given a notice (Ex.P-27) under Section 91

CrPC. At 12.50 pm, the Appellants were given information before the witnesses about their rights of search. The Appellants were informed that they could opt for their and their vehicle's search by a Magistrate or a Gazetted Officer or by Sub-Inspector Manoj Prajapati (PW-5) himself. A Panchnama (Ex.P-3) of this was prepared on which signatures of the witnesses and the Appellants were obtained. After obtaining consent from the Appellants, Sub-Inspector Manoj Prajapati (PW-5) gave search of his own and other members of the search team accompanied to him to the Appellants in which no objectionable article was found by the Appellants. Search Panchnama (Ex.P-4) of this was prepared. Thereafter, at 1.20 pm, after giving consent by the Appellants for search, a search of the Appellants and their Maruti Zen Car was made in which original notice under Section 91 CrPC from Appellant Govind, driving licence of Appellant Govind, sale-deed of the Maruti Zen Car, four photocopies of NOC slip, Rules of Transport Department of Uttar Pradesh, driving licence of fled person Ramyash Patel and Ganja like substance filled in bags were recovered. Search Panchnama (Ex.P-5) of this was prepared on which the Appellants and the witnesses put their signatures. At 1.40 pm, in front of the Appellants and the witnesses, total 12 white plastic and twine bags were recovered from the back seat of the Maruti Zen Car in which green dry seed-like Ganja was recovered in front of the witnesses. Panchnama (Ex. P-6) of this recovery was prepared on which signatures of the Appellants and the witnesses were obtained. At 2.00 pm, near Kokadinala Tekri, Kondagaon, the recovered substance was smelled, tasted and rubbed in which it was found to be Ganja. The witnesses asserted that the recovered material was Ganja. Thereafter, identification Panchnama (Ex.P-7)

of the Narcotic Drug seized during the search was prepared. The seized Ganja was mixed and its Panchnama (Ex.P-8) was prepared. Verification Panchnama (Ex.P-9) of the electronic weighing machine brought by Constable Garanju Netam (PW-3) was prepared. Thereafter, at 3.30 pm, Constable Garanju Netam (PW-3) weighed the recovered 12 bags of Ganja separately on the electronic weighing machine in which it was found that the total weight of the seized Ganja was 78.900 Kilograms. Weight Panchnama thereof is Ex.P-10. Thereafter, two sample packets of 50 Grams each were prepared from each seized bag of Ganja. The seized bags were marked from A to L. The sample packets were marked as A1 to A12 and L1 to L12. Sample Panchnama (Ex.P-11) was also prepared. Seizure of remaining Ganja of total 77.700 Kilograms, which was left after taking out the quantity of 1200 Grams of Ganja for preparation of sample packets as also the seizure of sample packets was made vide Ex.P-12. Specimen Seal Panchnama (Ex.P-13) was also prepared. Statements of witnesses Kalim Ahmed (PW-1) and Mohammed Imran (PW-2) were recorded. Appellants Govind and Munesh were arrested vide Arrest Memo Ex.P-14 and Ex.P-15, respectively. Information of arrest was given to Appellant Govind's brother Ramnath Kaul on telephone vide Ex.P-16.

17. At 5.25 pm, i.e., after completion of the search and seizure proceedings, Sub-Inspector Manoj Prajapati (PW-5) returned to Police Station Kondagaon along with the search team/staff, independent witnesses, materials taken for the search and seizure, the Appellants and all the seized materials including the sample packets. He handed over the seized materials to Malkhana

Moharrir Naresh Sahu (PW-4), an entry of which was made into Rojnamcha Sanha No. 40 (Ex.P-28). He registered Crime No. 159 of 2010 and sent information of all the proceedings of Crime No. 159 of 2010 to S.D.O.(P.), Kondagaon vide Ex.P-29. On 13.08.2010, the seized Ganja was sent to Forensic Science Laboratory, Raipur through the Superintendent of Police, Bastar vide Ex.P-30 for chemical examination, an acknowledgment of which is Ex.P-31. FSL Report is Ex.P-32 which confirms that the material sent for chemical examination was Ganja.

18. Independent witnesses Kalim Ahmed (PW-1) and Mohammed Imran (PW-2) were examined in the Court. In his Court statement, Kalim Ahmed (PW-1) did not support the case of the prosecution and turned hostile. In cross-examination also, he did not support the case of the prosecution, but, he admitted his signatures on Ex.P-1 to Ex.P-16. This witness has not been given any suggestion by the defence counsel that the Appellants were brought from Kondagaon Bus Stand. Mohammed Imran (PW-2) has also not been given any suggestion by the defence counsel that the Appellants were brought from Kondagaon Bus Stand. In the cross-examination of independent witnesses Kalim Ahmed (PW-1) and Mohammed Imran (PW-2) and Investigating Officer Manoj Prajapati (PW-5) also, the defence counsel has not been able to prove the defence of the Appellants that they were brought from Kondagaon Bus Stand.
19. As far as evidence of Mohammed Imran (PW-2) is concerned, this witness has admitted in his examination-in-chief that he had put his signatures on Ex.P-1 to Ex.P-16. But, this witness, in addition to this, did not support the case of the prosecution. Therefore, after

declaring him hostile, when he was cross-examined by the prosecution, he fully supported the case of the prosecution. This witness has denied the suggestions given by the defence counsel regarding investigation proceedings of the police.

- 20.** Constable Garanju Netam (PW-3), who had brought electronic weighing machine and had also weighed the seized Ganja and its sample packets, has verified the weight certificate (Ex.P-18). Head Constable Umashankar Netam (PW-6), who was posted in the office of S.D.O.(P.) as Reader, had placed the relevant register before the Trial Court. This register was maintained for receipt of information of crimes in the office of the S.D.O.(P.) for the period from 15.03.2010 to 23.03.2011. At serial No. 6 of the register an entry regarding receipt of information of Crime No. 159 of 2010 of Police Station Kondagaon regarding seizure of Ganja is registered. This document is marked as Ex.P-29. An acknowledgment of receipt of this information in the office of the S.D.O.(P.) was given by the then Reader of the said office.
- 21.** The evidence of Investigating Officer Manoj Prajapati (PW-5) could not be rebutted in cross-examination and his statement is supported by the documents prepared by him relating to the instant case.
- 22.** Learned Counsel appearing for the Appellants/defence has not been able to state how the mandatory provisions of the Act were violated in the search and seizure and he has also not cited any case law in support of his stand.
- 23.** As far as placing reliance on the evidence of police witnesses is concerned, arriving at a conclusion on the basis of the evidence of

police witnesses is not unjustified. In this context, in **Kurukshetra Sena and others v. State of Chhattisgarh, 2011 Cri.L.J. 2493**, this Court has observed as under:

“**22.** In these circumstances, the evidence of G.N. Singh (PW-7) is substantially remain for consideration. He is police officer. His evidence cannot be discarded only on the ground that he is police officer and interested in the outcome of the case. While dealing with the question i.e. evidentiary value of the statements of Police Officers, the Apex Court has held in the case of Anil alias Andya Sadashiv Nandoskar v. State of Maharashtra, (1996) 2 SCC 589 : AIR 1996 SC 2943, that testimony of police officials are not liable to be discarded merely because they are police officials. However, their evidence should be carefully scrutinized and independently appreciated. The Apex Court further held that witnesses being Police Officers do not by itself create a doubt about their creditworthiness if non-examination of Panch witnesses is explained satisfactorily.”

- 24.** Therefore, in view of the aforesaid discussion, I arrive at a finding that the prosecution has proved its case against the Appellants.
- 25.** Consequently, the appeal fails and is dismissed. The impugned judgment of conviction and sentence is affirmed. The order of the Trial Court confiscating the seized white Maruti Zen Car is also maintained. The seized Ganja may be disposed of according to the settled law and procedure.
- 26.** It is reported that the Appellants are in jail. They shall suffer the remaining sentence imposed upon them.

Sd/-
(Anil Kumar Shukla)
JUDGE