

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 416 of 2012**

- Kamal Narayan Sahu S/o Jhaduram Sahu, R/o Gandhinagar Bhilai, Distt. Durg C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through - P.S. Kondagaon, Distt. Bastar C.G.

---- Respondent

For Appellant:
For State

Mr. Prakash Tiwari, Advocate
Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****31.01.2017**

1. The present Appeal has been preferred assailing the judgment of conviction of dated 23.03.2012 passed in Special N.D.P.S. Case N 4. 03/2010 by the Special Judge (N.D.P.S. Act 1985), Bastar Place Jagdalpur, District – Bastar (Chhattisgarh). Vide the said impugned order the Court below after conclusion of the trial has convicted the Appellant under Section 20(B) (2-C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (in short 'the NDPS Act') and sentenced to undergo R.I. for 10 years with fine of Rs. 1,00,000/- and also with default stipulations.
2. The case in brief is that the Police Station, Kondagaon received a secret information in respect of illegal transportation of huge quantity of illegal Ganja in a bolero jeep coming from Orissa bearing Registration No. OR-10-D/7741. Based upon the said secret information after

necessary compliance as is mandatory under the provisions of the NDPS Act a team was constituted for searching the said vehicle as per the secret information. Accordingly the team of police officials and their police staff waited at the Forest Naka, Raipur Road. After some time the said vehicle bearing Registration No. OR-10-D/7741 reached at the Forest Naka. When the police staff tried to stop the said vehicle the driver of the offending vehicle did not stop the vehicle and tried to run away from the place. However, the police staff chased the said vehicle and stopped the vehicle at village – Chargaon. During the course of search it was found that the accused was carrying about 165.50 Kg of Ganja in the said vehicle. On the basis of the said recovery crime No. 146/2009 was registered for an offence under Section 20(B) (2-C) of the NDPS Act and the Appellant was arrested on 11.06.2009. Subsequently, the matter was put to trial before the Special Judge, the N.D.P.S. Act, Bastar place – Jagdalpur.

3. During the Course of the trial the prosecution examined as many as 7 witness and there was no witness examined on behalf of the defence. After, conclusion of the trial the Court below found the Appellant to be guilty of the offence under Section 20(B) (2-C) of the NDPS Act and sentenced him for the period as mentioned in the first paragraph of the present judgment. It is this judgment of conviction which is under challenge in the present appeal.
4. Learned Counsel for the Appellant Shri Tiwari submits that the judgment of conviction is bad in law and is contrary to the settled legal position in as much as the prosecution has not been able to prove its case beyond all reasonable doubts to establish the offence against the

present Appellant. Sh. Tiwari submits that since the prosecution against the Appellant was under the provisions of the NDPS Act, it is the settled legal position that the provisions of the NDPS act has to be strictly complied with by the prosecution and the investigating agency.

5. Learned Counsel for the Appellant drew attention of the Court to the fact that except for the departmental witness all other independent witnesses particularly in respect of seizure of the contraband, have not supported the case of the prosecution and so far as departmental witnesses are concerned there are a large number of contradictions and omission in their statement and benefit of which should be given to the Appellant and the judgment of conviction therefore deserves to be set aside /quashed.

6. Sh. Tiwari, further refer to the statement of PW-7, N.R. Mandavi who at paragraph 20 in his cross examination categorical stated that:

"यह कहना सही है कि, सरमस पंचनामा में सील का नमूना अंकित नहीं है । यह कहना सही है कि, सैंपल के पैकेटों को सीलबंद नहीं किया गया था ।"

7. Which by itself clearly stipulates that the sample which were collected have not been sealed neither were they seal packed samples. Shri Tiwari, further referred to the statement of PW-5 Laxmi Kant Rawte a constable of the police station Kondagaon at the relevant point of time who was entrusted with the sample packets to be taken to the Forensic Laboratory, Raipur for chemical analysis. He has in his deposition in paragraph 2 has stated as under:-

" यह कहना सही है कि, मैं १२/६/०९ को सैंपल पैकेट ले गया था और उसे विधि विज्ञान प्रयोगशाला रायपुर में दिनांक १८/६/०९ को जमा किया था । यह कहना सही है कि, उस दौरान सैंपल पेकेट मेरे पास में था और मैंने उस सैंपल पैकेट को रायपुर

के किसी थाना में जमा नहीं किया था ।"

8. This statement of PW-5 further creates great element of doubt on the prosecution story so far as the authenticity of the samples which were collected and which were sent for chemical analysis. Once when PW-5 and PW-7 both have stated that the sample did not have mark and seal and the sample packets which were not sealed and these open samples packets were in custody of PW-5 for about more than 6 days during the course of time when he was to take the samples to the Forensic Laboratory for chemical analysis. It creates a great element of doubt whether it is the same sample which was taken from the contraband seized from the vehicle on the date of incident which was given to the Laboratory for chemical analysis. These two vital facts by itself creates a great element of doubt on the prosecution story and the entire prosecution story gets collapsed on this vital lapse on part of the prosecution. The very fact that sample packets were not sealed and the fact that sample packets were in the custody of PW-5 after it was ordered to be sent for chemical examination for a considerable period of more than 6 days. It creates a great element of doubts on the case of the prosecution and does not rule out the possibility of samples getting tampered during the intervening period particularly when the sample packets were nor were sealed packet, in the opinion of this Court prosecution has not been able to establish its case so far as the offence under Section 20(B) (2-C) of the NDPS Act is concerned beyond all reasonable doubts against the present Appellant.
9. In the light of the aforesaid serious lapse on the part of the prosecution, this Court does not find it to be a fit case where the

conviction of the Appellant deserves to be upheld or affirmed. In the light of the serious lapse on the part of the collection of the samples and secondly in sending the samples to chemical examination, the benefit of doubt definitely would go in favour of the present Appellant accused and therefore the judgment of conviction given by the Court below does not seem to be proper, legal or justified.

10. Accordingly, the present Appeal is allowed.

11. The judgment of conviction is set aside and the Appellant stands acquitted from the charges under Section 20(B) (2-C) of the NDPS Act. He is in jail. He shall be released forthwith from the Jail if not required in any other offence.

Sd/-
(P. Sam Koshy)
JUDGE