

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 48 of 2014**

Mannuram Netam, S/o. Lakhanram Netam, Aged about 21 years, Caste-Gond, R/o. Balodabazar, Ajad Chowk, Police Station- Balodabazar, District Raipur (Now Balodabazar) Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh, Through Police Station- Bhanpuri, District Bastar, Chhattisgarh.

---- Respondent

 For Appellant : Mr. Abhijeet Sarkar, Advocate
 For State/Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****14.07.2017**

1. This appeal is against the judgment of conviction dated 05.03.2012 passed by the Court of Special Judge, N.D.P.S. Act, Bastar, in Special N.D.P.S. Case No.22/2009 whereby the appellant has been convicted under Section 20(b)(ii-c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "*the NDPS Act*") and sentenced to undergo R.I. for 10 years and fine of Rs.1,00,000/-, in default of payment of fine amount, additional R.I. for 1 year.
2. The brief facts of the prosecution case is that on 23.07.2009 on an information received by the police of Police Station Bhanpuri that a person who is dressed in lining shirt of black & white is carrying blue & white bag having Cannabis and is traveling by Payal Bus from Jagdalpur to Raipur, the same was recorded in Rojnamchasanha and thereafter two independent witnesses were called. The independent witness Shyamlal & Bhiguram after reaching Police Station were informed about the fact and Mukhbirpanchnama was also prepared of

the fact that if the warrant is obtained, there are chances of disappearance of the goods and evidence by the accused. It was recorded and the higher officials i.e. S.D.O.P. was informed and the information was sent through the Constable. Such information was further recorded, thereafter, the I.O. PW-6 went alongwith the staff and the witnesses towards the place of incident. Thereafter, when the Bus came, it was stopped and all the passengers were checked and the person of the like description was found sitting at the back seat and was carrying two bags. He was made to alight from the Bus along-with bags and on a query, name was disclosed as Mannuram Netam and having enquired the contents of the bag, it was informed that the Cannabis were being carried in the bag. The accused thereafter could not produce the valid document, thereafter, he was served with a notice under Section 50 of the NDPS Act about his right to be checked through the Gazetted Officer or any Magistrate. Having obtained the consent, the body of the accused appellant in person was checked alongwith other staff. Thereafter, from the bag, Cannabis were recovered, which was on the primary inspection on rubbing, smelling and by burning found to be Cannabis and thereafter the goods were weighted. After weighing, it was found to be 29 Kg. Subsequently, from the two bags, samples of 25 grams each were taken out and were marked as A-1 A-2 and B-1 B-2 and were sealed. Thereafter, all the samples and the bags were sealed and sealing panchnama Ex.P-11 was prepared and placed and the entire seizure of 29 Kg of goods were made from the accused and he was arrested. Thereafter, the entire goods were deposited in the Malkhana and the FIR was registered under Section 20 of N.D.P.S. Act by Ex.P-24. The samples which were seized were sent to FSL and having found the report of Cannabis in positive, the charge sheet was filed.

3. During the course of trial, the appellant/accused abjured the guilt and claimed to be tried. The independent witnesses of seizure including other proceedings namely Shyamlal & Bhiguram did not support the case of the prosecution. The trial Court after evaluating the evidence, convicted the accused/ appellant as aforesaid, hence this appeal.
4. Learned counsel for the appellant would submit that in this case the goods were seized from the Bus and the goods did not belong to the appellant, as it was kept under the side of the seat wherein the appellant/accused was sitting. Therefore, it cannot be stated that the said goods belonged to the appellant. It is further stated that there is non-compliance of Section 42 of the N.D.P.S. Act and therefore the conviction cannot be sustained and accordingly, the appellant is required to be acquitted.
5. Learned State counsel opposes the argument and submits that the order of conviction is well merited, which do not call for any interference.
6. I have heard learned counsel for the parties at length, perused the documents and statements on record.
7. Perused the case file of the lower Court along-with the documents. The I.O. Fulchand Sahu was examined as PW-6. As per the statement, on 23.07.2009, he received an information that a person wearing fullpant and white & black liner shirt is traveling with Cannabis in two bags, one is of blue and another is white and he was coming from Jagdalpur to Raipur by Payal Bus. The same was recorded in Rojnamchasanha and the document is proved as Ex.P-18(c). Perusal of Ex.P-18(c) would show that it is an affirmation of initial commission of crime. Thus having the same, the compliance of Section 42(1) of N.D.P.S. Act was completed. Thereafter, he called two independent witness namely Shyamlal & Bhiguram and the Mukhbirpanchnama

Ex.P-1 was prepared. Subsequent, thereto at 9:45 in compliance of Section 42(2) of the N.D.P.S. Act, it was recorded that if he tries to obtain the search warrant, in such case, the accused may flee away with the evidence, therefore, after recording his satisfaction by Ex.P-15 to that effect, it was sent through one Constable to the higher officials which is recorded in Ex.P-19(c) the Rojnamchasanha.

8. The statement of Samaylal Pandey, PW-5, who was working in S.D.O.P. Office, Kondagaon, which is higher office to that of Investigating Officer has stated that on 23.07.2009, he had received an information about commission of crime by informer-panchnama and information to the fact that no time is left out for obtaining the warrant of that panchnama was received through one police constable which was registered at serial No.8 at Ex.P-14(c) which is the receipt Register. Ex.P-14(c) also would show that on 23.07.2009 at about 2 p.m., the said information was received, thereby reading the document together that the statement of PW-5 & PW-6, it would show that there has been sufficient compliance of Section 42(1) & 42(2) of N.D.P.S. Act within the specified time limit.
9. The statement of PW-6 further shows that at the relevant time when they waited for the Bus and when the Bus came, it was intercepted and checked. According to the witness, the person of the same identity was found sitting in the back seat and was found carrying two bags. He was made to alight from the Bus alongwith the bags and on enquiry, he disclosed his name as Mannuram Netam i.e. the appellant. Having enquired the fact what are the goods, which was being carried, it was said to be Ganja. The appellant/accused could not produce any document. Thereafter, he was served with a notice under Section 50 of N.D.P.S. Act that if he wishes to be searched in person and bag, he may exercise his option to be checked by a

Gazetted Officer or Magistrate. The notice was explained by and is marked as Ex.P-3.

10. Perusal of Ex.P-3 fortifies the same and there is no discrepancy exists. The witness further stated that after recording the consent of the appellant, the I.O., staff and witnesses also got themselves examined by the accused also and it was reduced in writing by Ex.P-4 and nothing incriminating was found. Subsequently, the bag of the appellant was searched and inside two bags in plastic bag, Cannabis like substance were found and the Panchnama was prepared by Ex.P-5. The said articles were further identified by rubbing, smell & burning and prima facie it was found to be Cannabis. Thereafter, such exercise was recorded and reduced in writing by Ex.P-6. Subsequent thereto Beam-balance was called and weighments were also examined physically, which was reduced in writing by Ex.P-7 and all the goods which were in the bag kept in polythene were weighted and from one bag, goods/cannabis was found to be 11 Kg and from other bag, it was found to be of 18 Kg i.e. total of 29 Kg. The weightment-panchnama was prepared by Ex.P-8, which also bears the signature of PW-6.
11. After such weightment, from each bag, 25 gram packet samples were separated, which were marked as A-1 A-2 & B-1 B-2. The said samples which were marked as A-1 A-2 & B-1 B-2 were reduced in writing and panchnama was prepared by Ex.P-10. Perusal of Ex.P-10 also affirms the same that packets numbering A-1, A-2 & B-1, B-2 was prepared and seal was also placed, which is marked as D to D. Thereafter, the seal panchnama was also prepared and marked as Ex.P-11 to mark the seal. Subsequent thereto, the entire seizure of 29 Kg of Cannabis which were in two bags alongwith sealed packets were seized which were of 29 Kg by Ex.P-12. Perusal of Ex.P-12

would show that it also bears the seal and signature of the I.O. and the entire seizure of the Cannabis which were found in the bag alongwith samples and the accused was arrested by Ex.P-13.

12. The statement of PW-6 would further show that after such seizure and arrest, the appellant was brought back to the Police Station which was recorded in Rojnamchasanha Ex.P-23(c) and the seized material was deposited in the Malkhana and FIR was registered by Ex.P-24. The entire proceedings were further recorded and the information was sent to the S.D.O.P. Office, Kondagaon and copy of the said information is marked as Ex.P-17.
13. The statement of PW-7, Prafull Chandra Markam, who was working as Malkhana Moharir in the Police Station Bhanpuri would show that through the Sub-Inspector Fulchandra Sahu, the goods which were seized from Munnaram Netam of 11 Kg and 18 Kg alongwith 25 gram of samples marked as A-1 A-2 were deposited in the Malkhana and the Malkhana Register was proved as Ex.P-32(c). Subsequently, on 26.07.2009, samples were received back by one Homel Tigga to carry it to further for FSL to Raipur. The same was also recorded in the Malkhana and the receipt was given as Ex.P-33. The witness in the examination of the Court has clarified the fact that in the Malkhana Register A-1 A-2 samples were said to have been deposited but it was actually as A-1 B-1. It has been explained that four sample packets A-1 A-2 & B-1 B-2 were received by him but inadvertently, it was only written as A-1 A-2 and mistake it was on the basis of the seizure memo. In the cross-examination of this witness, he has clarified the fact that he has received the sample A-1 A-2 & B-1 B-2 and denied the suggestion that the samples were not of 25 grams. Ex.P-30(c) would show that on 26.07.2009 Homel Tigga was sent with the samples to FSL Raipur and the FSL receipts Ex.P-28 shows that FSL

Raipur on 27.07.2009 had received two samples through one Homel Tigga, which was marked as A-1 B-1.

14. Perusal of the order of the trial Court would show that during the trial, the goods which were seized i.e. Cannabis alongwith samples A-2 & B-2 were brought by PW-6 and the trial Court had observed it that the Cannabis were kept in the bag which bears the seal of J.P. Pandey, S.I. alongwith signature and name of the accused and crime was also written in that. Such articles were marked as क ख and sample packets were marked as ग घ. Therefore, the goods which were seized appears to have been placed during the evidence before the Court.
15. The FSL report in this case is marked as Ex.P-29, which purports that the goods sealed which were deposited by the Police Station were found to be Cannabis and positive report was given, therefore, considering it with the other circumstances, it would be admissible under Section 293 of Cr.P.C. and leaves no doubt that the samples which were deposited for inspection were found to be Cannabis.
16. Taking into totality of the facts, it has been established from the statement of PW-4, PW-5 & PW-6 that the goods which were seized, the appellant was carrying Cannabis while he was traveling. The statement of PW-3 Homel Tigga, PW-4 Kishore Kumar Joshi, who entered into the Bus and seized the goods has stated in the chief as also in the cross that initially when the bags were identified they were kept below the seat and the appellant himself had admitted the bags belonged to him. This fact has come in the cross examination, therefore, the suggestion to the fact that the bags did not belong to the appellant is completely diluted and over all assessment alongwith document would lead to show that the bags which were seized from the appellant were with the Cannabis, which has also been proved in the evidence. Consequently, considering the quantity of the Cannabis,

which were in 29 Kg, no apparent error is pointed out with the order of the learned Court below, which warrants interference.

17. After careful consideration of the facts and evidence, 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.
18. In view of the forgoing discussions, the appeal has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
JUDGE