

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 16/09/2016

Judgment delivered on: 11/10/2017

CRA No. 824 of 2012

- Shatrusudan Pathak, S/o Shri Ramesh Prasad Pathak, aged 27 years, R/o Khunda, Tahsil Mui, P.S. Reewa, District Reewa, Madhyapradesh.

---Appellant

Versus

- State of Chhattisgarh, Through P.S.-Kondagaon, Dstrict Bastar, Chhattisgarh

---- Respondent

CRA No. 986 of 2012

- Jamuna Prasad S/o Chote Lal Gupta Aged About 26 Years R/o Khokari Tola, Thana Rawa , Distt. Riwa (M.P.)

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Konda Gaon ,distt. Bastar C.G.

---- Respondent

&

CRA No. 1148 of 2012

- Santosh Vishvakarma Aged About 30 Years S/o Mangal Prasad R/o Goghar Mohalla, Baba House, P.S.-Kowali, Raipour, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through - P.S. Konda Gaon ,distt. Bastar C.G.

---- Respondent

For the Appellants: Shri Bhaskar Payashi, Shri Ashok Patil and
 Shri Akhilesh Mishra, Advocates.
For the State : Shri Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

11/10/2017

1. Since the above three appeals arise out of the same judgment, they are being decided by this common judgment.
2. Appellants in the above appeals have challenged the judgment of conviction dated 30.08.2012 passed by Special Court under NDPS Act at Jagdalpur thereby convicting them for offence under Section 20 (B) (ii-c) of NDPS Act and sentencing each of them to undergo R.I. for 10 years and to pay a fine of Rs.10 lacs.
3. The facts of the case in brief are these, that on 21.09.2010 on the basis of information received, a jeep bearing No.CG17-CA/2876 was intercepted by ASI N.S. Markam PW/4 along with other staff members and witnesses and after complying with the provisions under NDPS Act, the vehicle was searched. Appellants in all the cases were occupants of the same vehicle. On searching the vehicle, 267.9 kg ganja in 25 bags was recovered. Seizure of the articles were made, samples were prepared, which were sent for FSL examination and the same was confirmed to be narcotic substance ganja vide report Ex.P/35. After completing the procedure of search and investigation following the provision of NDPS Act, offence was registered vide FIR Ex.P/32.
4. After completion of investigation, appellant in all the cases were charge sheeted. The trial Court framed charges against the appellants under Section 20(b)(ii)(c) of NDPS Act. On pleading of denial by the appellants, the trial was conducted. After affording opportunity to prosecution and defence, the impugned judgment was passed by which the appellant in all the cases stand convicted and sentenced as mentioned above.

5. It is submitted by the counsel for appellant that the trial Court has erroneously convicted and sentenced the appellants; the evidence of prosecution witnesses were not reliable being full of contradictions, omissions and improvements. Apart from that, the mandatory provisions of Section 42 & 50 of the NDPS Act were not complied with during the search and seizure. It is prayed that the impugned judgment be set aside and the case be remanded back to the trial Court.
6. Learned counsel for the State opposes the grounds in appeal and the submissions made in this respect, it is submitted that prosecution has proved its case beyond reasonable doubt. Hence, the impugned judgment does not suffer from any infirmity.
7. Heard both the parties and perused the record of the trial Court.
8. Question for determination in these appeals is whether the conviction of appellant is sustainable in law?
9. ASI - N.S. Markam PW4 is the main witness, he has stated that on receiving information and after completing the formality of sending information to immediate superior SDOP, Makdi vide Ex.P/2 and recording the same in Station House diary vide Ex.P/27, he proceeded to the spot. The police personnel tried to stop the vehicle bearing registration No.CG-17-CA/2876 but the driver instead of stopping the vehicle proceeded ahead after dashing the stopper. The said vehicle was chased by them and stopped. The appellants were found seated in it. After giving a notice under Section 91 to the appellants to produce document about luggage in the vehicle they failed to show any such document. Thereafter, consent of the appellant/ accused persons were obtained vide Ex.P/3 for search of the vehicle in their possession. A search was made of the vehicle in possession of appellants vide Ex.P/4 in presence of witnesses and 21 jute bags were found loaded in the vehicle containing narcotic substance ganja. A test of narcotics substance was conducted on the spot by rubbing, smelling and burning a sample vide Ex.P/6.
10. It is stated that the contents of 21 bags were taken out and mixed homogeneously vide Ex.P/7 and weightment of the same was done vide Ex.P/9. Weight of the contraband was found to be 267.9 kg. Two samples of

50 gram each were prepared and sealed vide panchnama Ex.P/10. All the articles recovered and searched were seized vide Ex.P/12. Proceedings at the spot were completed. Later on, after coming to the police station, the seized articles were handed over to the Malkhana Muharir vide entry in the Station House Diary Ex.P/31. Statement of ASI N.S. Markam PW4 in cross examination has remained unshaken. He has denied that he did not send any information to the office of SDOP Kondagaon. He has also denied all the adverse suggestions given to him in cross examination. There is no other statement in his cross examination to this effect that any of the statement made by him in examination-in-chief is false or stands rebutted.

11. The independent witness Dinesh Yadav PW1 and Kalim Ahmad PW2 have not supported the prosecution case and as such declared hostile. Head Constable Samaylal Pandey PW3, Head Constable Chhabilal Salam PW5, Afzal Khan PW6 have supported the statement of N.S. Markam PW4 to the extent they had helped the investigating officer in the investigation. Statement of another witness Sushil Patel PW7 has no relevance.
12. Appellant/ accused persons have defended the case simply by making adverse suggestions to the statement of the prosecution witnesses and the only plea taken by them that they were innocent and have been falsely implicated. The argument extended on behalf of the appellants is that the conviction should not have been recorded only on the basis of statement of police officer is of no consequence, as it is not a rule that statement of a police officer should always be disbelieved. The cross examination of N.S. Markam PW4 does not disclose any statement made by him, that he had any personal interest to implicate the appellants in both the cases. Although, the independent witnesses of the search and seizure turned hostile, but this by itself is not sufficient to discredit the testimonies of other witness who have duly supported the prosecution case. Hence, the statement of N.S. Markam PW4 supported by other witnesses of the Raiding Party is believable and the trial Court has not committed any error in placing reliance on his evidence.
13. Regarding the submission of non compliance of Section 42 of the Act, it appears from the statement of N.S. Markam PW4 that the provisions have been complied with. As the search and seizure was conducted by N.S.

Markam PW4, who is of the rank of Assistant Sub-Inspector, and as per his statement there being no time available to obtain a search warrant, he proceeded to the spot to intercept and search after sending proper information to his superior officer, which is un rebutted statement. Hence, the provision under Section 42 is sufficiently complied with.

14. Regarding compliance of Section 50 of the Act in this case, it is observed that Section 50 of the Act provides for personal search of any person and the provision of Section 50 do not apply to any search or seizure of bag and baggage.
15. Counsel for appellants places reliance on the judgment of the Hon'ble Supreme Court in the case of **Noor Aga Vs. State of Punjab**, reported in **2008 (16) SCC 417** in which it was found that the samples were not kept in safe custody and in these circumstances the Hon'ble Supreme Court has held that the fact of recovery has not been proved beyond all reasonable doubt. The facts of the present case are not similar to the fact of above cited case before and therefore the appellants do not get any benefit of the same. Similarly, the appellants do not get any benefit of the judgment in the matter of **Jaal Singh Vs. State of Madhya Pradesh**, reported in **2006(3) MPLJ** because the facts of that case are different from that of the present case. The admission of N.S. Markam PW4 in his cross examination that the sample of the seized used for sealing the articles was in printed of Ex.P/12 by using ink pad does not imply that the articles seized were sealed by using the ink pad and no question was put to him that the seized articles were not sealed by using lakh.
16. After due consideration and on scrutinizing the evidence of prosecution in this case, it is found that impugned judgment of trial Court does not suffer from any infirmity. Hence, all the appeals are without any substance and the same are dismissed accordingly.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE