

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 150 of 2012

- Rajendra Singh Thakur @ Abhay S/o Shivilal Singh , R/o Quarter No - 1112 Mines Colony Bijury , P.S. Bijury , Distt. Anuppur C.G.

---- Petitioner

Versus

- State Of Chhattisgarh, through PS Magarload, District Dhamtari.

---- Respondent

For Appellant	:	Shri Rakesh Thakur, Advocate.
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker J.

28/07/2017

1. This appeal has been preferred against the judgment and order dated 24.3.2011 passed by the Special Judge, (Narcotic Drugs and Psychotropic Substances Act, 1985), Dhamtari in Special Criminal Case No.5/10 holding the accused/appellant guilty under Section 20 (B) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to further undergo RI for 5 years.
2. Facts of the case, in brief, are that on 15.3.2010 at about 2.45 p.m. while on patrolling duty PW-6 P.K. Soni received a secret information that two persons are coming from the side of Orissa and going towards Raipur in a blue colour Maruit Car with narcotic substance. On receipt of the said

information, the said car was intercepted by the police at Mohandi Kamarpara Main Road and accused/appellant was apprehended and another was managed to flee. The accused/appellant was informed that as per secret information received, the police had information about narcotic substance being carried by the person corresponding to his description. On inquiring his name, the accused informed that his name is Rajendra Singh. The accused was given a written memo in compliance of the provisions of Section 50 of the NDPS Act. PW-6 also informed the accused that as per the secret information he wants to search him and if he prefers that he should be searched in presence of a gazetted office or magistrate, he would make arrangement for the same but the accused did not opt for that and informed PW-6 that he may be searched by him. Thereupon, PW-6 searched the accused/appellant herein and the said car and thirteen plastic bags & jute bags containing contraband were found beneath the back seat of said car. On preliminary examination, the substance recovered was found to be 'ganja'. Thereafter, one Krishna Kumar Patel was called for weighing the contraband and on weighing the same, it was found that the contraband recovered from the accused/appellant is 120 kilogram. Thereafter, two samples of 50 grams each of ganja were taken and sealed separately. The accused/appellant was given notice under Section 91 CrPC to produce the documents showing valid possession of the contraband but he failed to produce any documents and did not give any satisfactory answer. The accused also failed to show any document relating to ownership of the vehicle in question and therefore the same has been seized vide seizure memo Ex.P-15. Un-numbered FIR was registered on the spot itself. The accused/appellant was formally arrested and brought to the police station where numbered FIR (Ex.P-21) was registered against him. Intimation

was sent to the Sub Divisional Officer (P) vide Ex.P-23. Seized articles were sent for chemical examination to the Forensic Science Laboratory on 17.3.2010, which was received by FSL on 19.3.2011 and from where report of Ex.P-26 was received on 14.7.2011. After completing investigation, challan was filed by the police for the offence under Section 20 (B) of the NDPS Act.

3. In order to establish the guilt of accused/appellant, the prosecution has examined seven witnesses. Statement of accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence and false implication in the case.
4. After hearing counsel for the parties, the Special Court has convicted and sentenced the accused/appellant for the offence as mentioned above. Hence this appeal.
5. Heard counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the appellant submits that;
 - no independent witness was joined, despite availability, and, as such, the case of the prosecution becomes doubtful.
 - the samples of contraband were deposited with the FSL after a delay of two days and as such, the possibility of tampering with the same, until the same reached the laboratory, could not be ruled. Even the samples so sent for chemical analysis were not sealed.
 - the sentence awarded by the Court below is too excessive and if this Court comes to the conclusion that the appellant is liable to be convicted then he may be sentenced with the rigorous imprisonment of

10 years.

7. On the other hand, counsel for the State supports the impugned judgment and submits that PW-2 Bodhan Singh has categorically stated in Para-4 of his statement that samples which were in the Maalkhana were duly sealed and in the sealed condition they were sent to the FSL for examination. He further submits that the investigating officer has also stated that in presence of the witnesses the entire contraband and samples were sealed and deposited in the Maalkhana. Impression of seal was affixed in the seizure memo and the same was found to be intact in the FSL. No question whatsoever has been put to the witness regarding tampering of seal and inordinate delay either in sending the samples to the Maalkhana or FSL. Even otherwise, the delay in depositing the sample has been duly explained by PW-7 in his statement and there is no reason for this Court to disbelieve his testimony. He further submits that no explanation has been offered by the appellant in his statement recorded under Section 313 CrPC as to how he came into possession of contraband.
8. Puranik Sinha (PW-1) is the police who helped in the initial investigation.
9. Bodhan Singh (PW-2) is the person who was posted as Maalkhana Incharge at the relevant point of time. He has stated that on 15.3.2010 Shri Pradeep Sori (PW-6) deposited three white colour plastic bags containing 10 kg, 12 kg & 11 kg contraband respectively and ten jute bags containing 12 kg, 6kg, 6kg, 8.500 kg, 9 kg & 11 kg contraband respectively and the entries in this regard were made in the Maalkhana register. In the cross-examination this witness has stated that he had handed over the sealed packets in sealed condition to Constable Devendra Nishad for transmission to the FSL.

10. Krishna Kumar (PW-3) has stated that he has a small grocery shop at village Mohandi. On 15.3.2010, he was called by the police at the spot i.e. Kamaalpara, along with scales to take weighment of the contraband. He went there. He had weight the contraband and total weight of the contraband was 120 kilogram. Out of the contraband, 50 gm each from every bag was taken out as sample. Weighment memo is Ex.P-8.
11. Pramod Pandey (PW-4) & Manoj Kumar Berwanshi (PW-5) are the members of the police party who had gone to the spot and apprehended the accused/appellant. These witnesses have deposed with respect to investigation, recoveries, sealing of parcels etc. in support of the case of the prosecution. According to these witnesses, PW-6 Pradeep Sori, Station In-charge, received a secret information that an unnumbered Maruti 800 car is coming from Orrisa and going towards Raipur via Mohandi, Kanwaarpara and in which two persons are carrying huge quantity of 'ganja'. On receipt of this information, they immediately reached at Mohandi and PW-4 requested some of the villagers to join the police party as witnesses but none agreed. Thereafter, secret information memo (Ex.P-1) & search warrant memo (Ex.P-2) were prepared. According to these witnesses, at about 11.45-12.00 in the noon one Maruti 800 Car came from the side of Nagri which was stopped by PW-6 and one accused was apprehended and another had managed to flee. These witnesses/ members of raiding party have corroborated each other on the aspect of receipt of secret information while they were on patrolling, personal search & recovery of contraband from the possession of accused/appellant, aspect of arrest etc. These witnesses have been cross-examined by the defence counsel and they stood on their grounds and there are no material contradictions.

12. Pradeep Kumar Sori (PW-6) is the investigating officer. While supporting the prosecution case he has stated that upon receipt of secret information that two persons carrying illegal contraband are coming from Orrisa in a blue colour unnumbered Maruti 800 car and going towards Raipur via Mohandi, he reached the spot, intercepted and apprehended the accused/appellant. He has described as to the manner in which the formalities were completed by him. Perusal of cross-examination of this witness also shows that the statement of this witness is not shaken in any manner.
13. Close scrutiny of evidence makes it clear that on 15.3.2010 on the basis of secret information the police reached the spot and intercepted the car (having the description mentioned above) and apprehended the accused/appellant. The investigating officer questioned him and his name & address was taken down. On searching the car, thirteen bags were found beneath the back seat of the car and when those bags were opened, it was found to contain ganja. On being served with a notice to show document for possession thereof, he failed to produce any such document. The accused/appellant has not been able to rebut or controvert his apprehension at the spot along with conscious possession of contraband i.e. ganja. Though there is no independent witness to the search, recovery and seizure, but, if the evidence of the investigating officer (PW-6) is seen, it is evident that an attempt was made to join the independent witnesses in the investigation by calling them through PW-4, but they showed their inability. It means that an effort was made by the investigating officer (PW-6) to join the independent witnesses, but none was ready to join. Under these circumstances, the conduct of the Investigating Officer could not be said to be blemished, in any manner. The mere fact that no independent witness could be joined, on account of

the aforesaid reasons, in itself, could not be said to be sufficient to disbelieve and distrust the evidence of the official prosecution witnesses. In such situation, the Court is only required to scrutinize the evidence of the official prosecution witnesses carefully and cautiously and after such scrutiny, if the Court comes to the conclusion that the evidence of the official witness inspires confidence and does not suffer from any serious infirmity, then no formidable reason can be coined, to disbelieve the same. In the instant case also, the evidence of the Investigating Officer has been subjected to indepth scrutiny and on such scrutiny, it has been found to be cogent, convicting, reliable & trustworthy and, therefore, there is no reason before this Court to disbelieve his testimony.

Though the accused/appellant in his statement under Section 313 Cr.P.C. denied the allegations against him and stated that he has been falsely implicated but he has not stated anything as to why a false case has been foisted against him. Thus the defence has not been able to make any dent in the testimony of Pradeep Kumar Sori (PW-6) to discard his evidence as untrustworthy. Being so, the entire prosecution case cannot be disbelieved merely on the ground that no independent witness was present at the time of search, recovery and seizure of the contraband from the possession of accused/appellant. It is now well settled that the evidence of search or seizure made by the police will not become vitiated solely for the reason that the same was not supported by an independent witness. In *State of NCT of Delhi v. Sunil* reported in (2000) 1 SCC 748 the Supreme Court has held as under:-

"It is an archaic notion that actions of the Police officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are

untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature."

As regards the submission of counsel for the appellant that there was a delay of 2 days' in sending the samples of seized contraband to the Chemical Examiner, which created a doubt about the credibility of samples. We notice that recovery of contraband was effected on 15.3.2010 and the samples were received by the Chemical Examiner on 19.3.2010, but during that period, the seal impressions of seized properties were found to be intact as it could be noticed from the testimony of investigating officer as also the report of FSL (Ex.P-26). According to Maalkhana In-charge (PW-2) also, 13 packets of samples were sent in sealed condition through Constable Devendra Kumar Nishaad to the FSL for analysis. No question was asked to the investigating officer regarding delay in sending the samples to the FSL and even there is no suggestion that any prejudice is caused to the accused on account of such delay. Thus, we are of the opinion that two day's delay in sending the samples to FSL did not cause any prejudice to the rights of accused/ appellant nor it is fatal to the prosecution.

14. In this view of the matter and keeping in mind that illegal *ganja* was recovered from the possession of the appellant and he had not offered any explanation in this regard, the judgement impugned convicting him as mentioned above appears to be fully justified.
15. So far as the sentence part is concerned, considering the quantity of contraband (*ganja*) seized from the possession of accused/appellant, he has already been in jail for more than seven years and that there is nothing on record to come to the conclusion that the accused/appellant is

habitual offender indulging in such activities, therefore, we think that it would meet the ends of justice if we reduce the sentence from 20 years to ten years, which is the minimum one prescribed under Section 20(B) of the Act of 1985.

16. The appeal is accordingly partly allowed. While confirming the conviction of accused/appellant under Section 20 (B) (ii) (b) of the Act of 1985, the sentence of 20 years rigorous imprisonment imposed on him is ordered to be reduced to 10 years and fine of Rs.1,00,000/- imposed on him is enhanced to Rs.2,00,000/-, in default of payment of fine, he shall undergo R.I. for 05 years. Since the accused/appellant is already in custody, no direction regarding his surrender etc. is needed.

Sd/-
(P. Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

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