

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 563 of 2014**

Ramjit Nishad s/o late Shyamlal aged about 25 years, R/o. Village Darda police station Kotwali Banda, district Banda (U.P.)

---- Appellant (in jail)

Versus

State of Chhattisgarh through Station House Officer, police station : GRP Raipur, District Raipur, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Amit Singh Chouhan, Advocate.
For the Respondent/ State:		Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

09.01.2017

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 26.4.2014, passed by the Learned Special Judge (NDPS Act), Raipur, District Raipur, Chhattisgarh, in Sessions Trial No. 31 of 2013, whereby and whereunder the learned Special Judge has convicted the appellant/ accused under Section 20(b)(ii)(B) of the NDPS Act, 1985 (for short 'the NDPS Act') and sentenced him to undergo RI for 5 years and to pay fine of Rs.30,000/-, in default of payment of fine, to further undergo RI for two years.

2. The case of the prosecution, in brief, is that on 20.08.2013, Inspector Shankar Chandrakar (PW-8) posted in police station GRP Raipur received an information from one informer, that three persons between the age group

of 25 to 30 years were carrying bags of narcotic substance (Ganja) and waiting for train in the platform of Railway Station, Raipur. In presence of the witnesses, one panchanama Ex.P/1 was recorded. Inspector, Shankar Chandrakar (PW-8) apprehended the appellant and two others on the platform of Railway Station, Raipur. Since, the Inspector did not have time to obtain search warrant he recorded panchanama Ex. P/2, detailing the circumstances for carrying on search without obtaining search warrant. The appellant was given an opportunity to search the members of raiding party, which was availed by him and no objectionable substance was found in possession of the members of the raiding party, vide Ex. P/5. A notice under Section 50 of the NDPS Act (Ex. P/3) was served on the appellant, informing about the right with respect to search in presence of the Gazetted Officer or any Magistrate. The appellant submitted a written consent vide Ex. P/4 to be searched by the Officer present.

3. The air bag and baggage which were in possession of the appellant were searched and on searching, packets containing 8 kg of Ganja from one bag and packets containing 7 kg of Ganja from another bag were recovered. The contents of the packets were taken out and identified as illegal narcotic substance, Ganja. Fifteen sample packets of 50 gms each were prepared and the weighing procedure was carried on. One panchanama Ex. P/6 was recorded for the whole procedure and the recovered articles were seized from the possession of the appellant vide Ex. P/7. The First Information Report Ex. P/13 was recorded and the seized articles i.e. bags containing Ganja and sample packets which were in sealed condition were deposited in Malkhana vide Ex. P/11C. The sample packets were sent for FSL examination vide Ex.P/19, it was confirmed by FSL report Ex. P/19 that the

contents of the sample packets was narcotic substance, Ganja. On completion of investigation, the appellant was charge-sheeted.

4. The appellant was charged under Section 20(b)(ii)(B) of NDPS Act, 1985, read with Section 29 of NDPS Act, 1985. The prosecution examined as many as 8 witnesses and no evidence was led in defence. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against him, the appellant pleaded innocence and false implication. On denial of charges, trial was conducted and impugned judgment was passed, by which the appellant has been held guilty, convicted and sentenced, as mentioned above.

5. The grounds of the appeal are, that the learned trial Court has erred in convicting and sentencing the appellant and the finding of conviction against the appellant is unsustainable being not based on any evidence, which can be termed as proof beyond reasonable doubt. The trial court failed to appreciate that the independent witnesses of the seizure turned hostile. The impugned judgment is bad in law and against the principles laid down. There was material on record to establish the innocence of the appellant which has been ignored. It is prayed that the impugned judgment be set aside and the appellant be acquitted.

6. Learned counsel for the appellant submits that there had been no legally admissible evidence against the appellant. The mandatory provisions of the NDPS Act have not been followed by the Investigating Officer while proceeding against the appellant. Hence, the appellant is entitled for benefit of doubt.

7. On the other hand, learned State counsel has argued that the prosecution has proved its case beyond reasonable doubt and there is no scope for interference with the impugned judgment.

8. The question which arises for consideration in this appeal is whether the conviction of the appellant is supported by the prosecution evidence beyond reasonable doubt and for which the evidence led before the trial Court and the findings arrived at in the impugned judgment have been perused.

9. Shankar Chandrakar (PW-8) stated that on 20.8.2013 he received an information from one informer and thereafter recorded panchanama Ex. P/1 to proceed immediately for search. He prepared a panchanama Ex. P/2 detailing the circumstances due to which he needed to proceed without obtaining a search warrant. He apprehended the appellant and served a notice under Section 50 of the NDPS Act vide Ex. P/3, which was received by the appellant. The appellant submitted a written consent vide Ex. P/4 to be searched by the Officer present. The members of the raiding party were searched by the appellant vide Ex.P/5. The air bag in possession of the appellant was searched, in which 8 polythene bags containing ganja were recovered. The contents of the packets containing narcotic substance were weighed and it was found to be 8 kg. On search of another baggage which was in possession of the appellant, 7 polythene bags of ganja were recovered and on weighing them the weight was found to be 7 kg. In total, 15 kg of narcotic substance of ganja was recovered from the appellant. From each bag, a sample of 50gm was prepared for FSL examination. These proceedings were recorded vide Ex. P/6. The articles were seized

vide Ex. P/7. FIR Ex. P/13 was recorded. The seized articles were deposited in Malkhana vide Ex. P/12. Samples of the seized articles were sent for FSL examination vide Ex. P/17 and the FSL report Ex. P/19 was obtained.

10. Inspector, Shankar Chandrakar (PW-8) stated in his cross-examination, that after receiving information he went to the spot i.e. railway platform where he found that the appellant was sitting there. There is no suggestion given by the defence that the bags found in possession of the appellant could have been possessed by somebody else. Further, he denied all the suggestions given in defence and also denied that he has falsely implicated the appellant.

11. Pintu (PW-1) was the witness to the information panchanama Ex. P/1, panchanama for search without warrant Ex. P/2, notice Ex. P/3, consent Ex. P/4, search panchanama Ex. P/5, procedure panchanama Ex. P/6, seizure memorandum Ex. P/7 and arrest memorandum Ex. P/8. He further stated that from the possession of the appellant 8 kg of ganja from the air bag and 7 kg of ganja from another bag, was recovered. Out of which samples were prepared. This statement remained unchallenged. Similar is the statement of Ratnakar Nayak (PW-2), which is a totally unchallenged statement. Constable, Lalmohan Mehta (PW-3) helped in the proceeding of search and seizure. Constable, Bhagwat Prasad (PW-4) was the messenger of the information to the office of Deputy Superintendent of Police. Head-Constable, Manmohan Singh (PW-5) informed telephonically about Exs. P/1 and P/2 to the office of Deputy Superintendent of Police. This statement is again unchallenged. No question was put to him in cross-examination.

Head-Constable, Dharamraj Dhruv (PW-7) has supported the version of the Inspector – Shankar Chandrakar (PW-8) and his statement remained un rebutted.

12. After going through the entire evidence of the prosecution witnesses in this case, it is evident that the evidence of the prosecution witnesses has remained unchallenged throughout regarding the procedure adopted by Shankar Chandrakar (PW-8). On the basis of the statements, it is clear that he has followed the procedure as provided under the NDPS Act by recording a panchanama and sending information to the higher authority as required under Section 42 of the NDPS Act. Although a notice under Section 50 of the NDPS Act has been served on the appellant, but in this case there was no requirement to serve such a notice on the appellant, because it was not the search of the person of appellant but it was the search of a bag and baggage in possession of the appellant. In the evidence neither it is mentioned that the appellant has denied the possession of bag and baggage which was searched by the raiding party, nor any alternative claim has been made in this respect. Hence, looking to the evidence on record there is no reason to understand that all the provisions under the NDPS Act have not been followed in making a search and seizure. In this case, the evidence of the prosecution is totally reliable and the finding of the conviction recorded by the trial court does not suffer from any infirmity.

13. In the alternative, it was prayed that, the appellant is in jail since the date of arrest i.e. 20.8.2013, thereby he has undergone in custody for 3 years 4 months and 21 days and as such the sentence awarded by the trial court may be modified. The conviction of the appellant is under Section

20(b)(ii)(B) of the NDPS Act, in which the contraband found is lesser than the commercial quantity but greater than smaller quantity.

14. In the facts and circumstances of the case, the conviction of the appellant is upheld. However, looking to the fact that the appellant has undergone more than half of the sentence of RI awarded to him, it is a fit case where the sentence of RI may be reduced. Therefore, the sentence awarded by the trial court is hereby set aside, instead thereof, the appellant is sentenced under Section 20(b)(ii)(B) of the NDPS Act to undergo RI of 4 years and fine of Rs.10,000/-. On non-payment of fine, the appellant shall further undergo RI for a period of three months.

15. The appeal is partly allowed to the extent indicated above.

Sd/-

(Rajendra Chandra Singh Samant)
Judge