

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 2049 of 2000**

- Smt. Guruvvari @ Hemawati W/o Subal aged about 42 years. Resident of village Baniya Gaon, P. S. Bhanpuri District-Bastar, M.P.

**---- Appellant****Versus**

- The State of M.P. (Now Chhattisgarh) through Police Station Nagarnar District- Bastar.

**---- Respondent**

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| For Appellant        | : | Shri M. P. S. Bhatiya, Advocate |
| For Respondent/State | : | Shri Anil Pillai, Dy. A.G.      |

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**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****27.07.2018.**

This appeal arises out of the judgment of conviction and order of sentence dated 18.07.2000 passed by the Sessions Judge & Presiding Officer of Special Court of NDPS, Jagdalpur in Special Case No. 79/1999, convicting the accused/appellant under Section 20(b)(i) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') and sentencing her to undergo RI for 2 years, to pay a fine of Rs.2,000/- in default of payment of fine sentencing her to undergo additional six months RI.

02. Facts of the case in brief are that on 14.03.1997 at about 8.40 am an information received by Sub-Inspector Shri K. K. Nag (PW-2) that in a bus bearing registration No. MP 20/B0293 some passengers were traveling with Ganja. During petrolling he prepared informer intimation report Ex.(P/3). Sub-Inspector K. K. Nag (PW-2) called two witnesses from Malegaon village and with these two independent witnesses proceeded for the place of incident and there the said vehicle was stopped. Notices for search of the bus were given to the driver and conductor vide Ex. P/5 to which they consented for search of the vehicle by K. K. Nag (PW-02). Search being made, in presence of two independent witnesses Jaidev (PW-2) and Dayaram (PW-3). Upon search of the basket which filled with the vegetable and under the vegetable contraband– ganja was found in possession of the Gurawaribai @ Hemwati accused/appellant, physical verification of the seized contraband by weighing instrument was done vide Ex.P/2 and thereafter, weighment of the contraband being done, it was found to be 7.300 kg vide Ex.P/1. Out of the said contraband, three samples of 50 gm each were drawn and sealed vide Ex.P/7. Dehati Nalishi was recorded vide Ex.P/9 on spot, spot map was prepared vide Ex.P/11

3. After reaching police station vide Ex.P/12 all the seized articles were deposited in Malkhana. The FIR vide Ex.P/8 was registered under crime No. 30/1997 by I.O. Sub-Inspector Shri K. K. Nag against the appellant under Section 20(b) (i) read with Section 8 of the NDPS Act, 1985. Information regarding seizure and arrest of the appellant

was given via wireless Vide Ex.P/15 to S.P., A.S.P. and SDOP and three samples drawn were sent to FSL vide Ex.P/13 along with copy of FIR, seizure memo, sample panchanama and specimen seal were received by FSL vide Ex.P/14. Vide Ex.P/14 a report was received from FSL confirming the contraband to be ganja. After completion of the investigation the charge sheet was filed against the appellant. However, while framing charge the trial Court framed charge against the accused/appellant under Section 20(b) (i) read with Section 8 of NDPS Act.

4. So as to hold the accused/appellant guilty, the prosecution examined Jaidev (PW-1), K.K Nag (PW-2) and Dayaram (PW-3). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication. In her defence no witness has been examined.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

6. Learned counsel for the appellant submits as under:

(I) that there is non-compliance of Section 42 and other mandatory provisions of the NDPS Act,

(ii) that there is no evidence regarding exclusive possession of contraband(Ganja) by the appellant.

(iii) that there is no independent witness supporting the prosecution case that contraband article was seized from appellant as per seizure memo Ex.P/1.

(iv) that no procedure was followed by the I.O. according to the Act.

The impugned judgment has been passed ignoring the material facts and the law governing the field and therefore, the same is liable to be set aside.

7. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the act and as such there is no illegality or infirmity in it warranting interference by this Court.

8 Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

9 It is clearly proved by investigating Officer Sub-Inspector Shri K. K. Nag (PW-2) vide Ex P/1 that the seized article was contraband Ganja. It was also proved according to Ex.P/14 FSL report. Jaidev (PW-1) has stated that when Police Officers informed that they want to check the bus because they have information that someone carrying

Ganja in the bus, and search was made by Police officer in his presence. The appellant/accused was in the bus and had a basket wherein ganja kept found. The ganja was weighed before this witness and its weight came to be 7.300 kg and that said article was divided in three packets in presence of PW1 and thereafter Exs. P/1/2/3/4 were prepared. In his cross examination he was stated that when Exs. P/1/2/3/4 were prepared he was at home.

10. In his statement I.O. Shri K. K. Nag (PW-2) has categorically stated that when information was received from informer he prepared information letter Ex.P/3. As per information panchnama vide Ex. P/4 he forwarded the information to his superior Officer, thereafter he prepared the consent letter for search vide Ex.P/5 and notice to accused/appellant as per Ex.P/6 if she wants search before any gazetted Officer or Magistrate and after that the search was made and according to Seizure memo (Ex.P/1) contraband was seized from appellant/accused. Dehati Nalisi (Ex.P/9) was promptly recorded at the spot and the same day FIR (Ex.P/8) was lodged against the accused/appellant and arrest memo vide Ex.P/10 was also prepared. After preparation of that documents spot map during investigation was also prepared. Sealed packet were deposited at Malkhana vide ExP/12 and sent for chemical examination vide Ex.P/13. After Chemical examination Ex. P/14 the seized contraband article was found to be ganja. After seizure memo that information was sent to the superior authority as per Ex.P/15. There is no reason to disbelieve

the evidence of K. K. Nag (PW-2) and likewise there is no such non-compliance by the I.O. of the mandatory provisions of the Act which could affect the credibility of the prosecution case. After arrest of the accused/appellant she was sent for judicial remand and that from Court premises accused/appellant absconded and then immediately vide Ex.A/1 another FIR in crime No. 102/1997, under Section 224 of IPC was registered against this appellant.

11 Jaidev (PW-1) in his cross-examination stated that when the procedure followed by I.O. K. K. Nag (PW-2) he was at home and he has no knowledge that the basket recovered in the bus belongs to appellant or not. It is a common phenomenon of villagers that they avoid to give a statement against the people of their village but in his chief-examination he has categorically stated that when the procedure followed by Shri K. K. Nag, I. O. he was present there and signed the document. There is no reason to disbelieve the evidence of I.O. Shri K. K. Nag and his statement also some extent supported by Jaidev (PW-1).

12. Considering the overall evidence on record oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding the appellant guilty under Sections 20 (b) (i) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act cannot be faulted with and the same are hereby affirmed.

13. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As it is reported that appellant/accused- Gurawaribai @ Hemwati be released after completion of his sentence awarded to her by the trial Court, therefore no further order is required.

**Sd/-**

**(Gautam Chourdiya)**  
**Judge**