

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-9-2018

Judgment delivered on 29-10-2018

CRA No. 794 of 2012

- Nandulal Chandra, s/o. Shri Sadharam Chandra, aged about 38 years, r/o. Village Aamakoni, Police Station Kosir, District Raigarh (CG).

---- Appellant

Versus

- State of Chhattisgarh Through the Station Incharge, Police Station Sarangarh, District Raigarh C.G.

---- Respondent

For Appellant : Mr. Alok Nigam, Advocate.

For respondent/State : Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 7-9-2012 passed by the First Additional Sessions Judge/Special Judge (under Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Raigarh in Special Case No.3 of 2011, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per prosecution case, on 6-4-2011 B.P. Jngade (PW/6) Assistant Sub Inspector of Police Station Sarangarh received an information that a person resident of village Aamakoni had brought Ganja illegally from the State of Orissa and was sitting with a sack having Ganja for the purpose of sale on the way leading from Godam to Kapisda, lying in wait and search for customer. The said information was recorded as per Ex.P/23 and independent witnesses were called and the said information was forwarded to higher authorities of Police and after legal formalities the said Police Officer rushed to the spot with police personnel and independent witnesses. Search was made upon accused and contraband article Ganja was seized in a sack and upon weighed it is found to be 20 kgs. Sample packets were prepared from the seized article and same were sent to FSL where test of Ganja was found positive. The matter was investigated and after investigation the appellant was charge-sheeted. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) Evidence of prosecution witnesses is full of contradictions and material omissions, but the trial Court overlooked the same and recorded finding against the present appellant which is bad-in-law.
- ii Independent witnesses have not supported the story of prosecution even though finding

of conviction is recorded by the trial Court.

- iii) Mandatory provisions of the Act, 1985 have not been complied with which is fatal to the prosecution.
- iv) Offence under Section 20(b)(ii)(c) of the Act, 1985 is not established, therefore, conviction and sentence awarded to the appellant is liable to be reversed.

He placed reliance on the decisions of Hon'ble High Court of CG and MP in the matters of **State of CG vs. Kamlesh Jurri and another¹**, **Krishnapal Singh vs. State of MP(Now CG)²**, **Bhaiyalal Patel and another vs. State of CG³** **Jaisingh vs. State of MP⁴** **Suresh Dubey vs. State of CG⁵**

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

¹ 2012 (2) CGLJ 115 (DB)

² 2012 (2) CGLJ 375

³ 2012 (2) CGLJ 384

⁴ 2007(1) JLJ 279

⁵ 2013(1) CGLJ 625

6. To substantiate the charge, prosecution examined as many as eight witnesses. To nullify the charge, defence has not examined any witness.

7. PW/6 B.P. Jangade is Sub Inspector of Police Station Sarangarh. He deposed before the trial Court that on 6-4-2011 upon information being received that one person had brought Ganja illegally, he recorded the said information as per Ex.P/21 and information was sent to Sub Divisional Officer (Police) through constable and rushed to the spot with his staff and witnesses where the appellant admitted possession of Ganja. After search of this witness and other witnesses accompanied with him, appellant was searched and contraband article was seized from him. It was weighed and quantity was found to be 20 kgs. Two sample packets each containing 100 grams were separated from seized article which was sealed and property was handed over to Incharge of Malkhana. Sub Inspector K.L. Yadav (PW/7) corroborated the evidence of this witness and deposed that seized article was kept in safe custody of Malkhana. Head Constable Narendra Kumar Tiwari (PW/8) is Incharge of Malkhana and as per version of this witness two sample packets sealed were kept in safe custody of Malkhana which is recorded in the register of Police Station as per Ex.P/22. This witness has proved all the Rojnamchasanha recorded during the course of proceeding. As per version of K.L. Yadav (PW/7), seized packets were sent to FSL through constable Buddhadev

Bariha No. 446 who brought acknowledgement receipt from FSL as per Ex.P/18 and report thereof was received as per Ex.P/19 in which test of Ganja was found positive.

8. From the evidence of all these witnesses and in corroboration of the evidence of PW/5 Lakhpati Pradhan and PW/4 Prakash Rathore, it is established that provisions of Sections 42(2), 55 and 57 of the Act, 1985 have been complied with and from their evidence it is established that information was sent to higher authorities as per provisions of Section 42(2) of the Act, 1985 and again seized articles were kept in safe custody. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence.

9. It is contended on behalf of the appellant that punch witnesses namely PW/1 Kamal Yadav and PW/2 Sonu Ratre have not supported the version of prosecution, therefore, charge against the present appellant is not established.

10. True it is that both these witnesses have not supported the version of prosecution but the fact remains whether they are real witnesses of the incident. From the evidence of Police Officer, it is established that independent witnesses were present at the time of incident. If these witnesses are not real witnesses and if they were suppressing the fact of seizure and other proceedings, their version is not reliable. On the other hand, if they were not present and they

are not real witnesses, their testimony is not required to establish the guilt.

11. It is contended on behalf of the appellant that the person who weighed the seized article has not supported the version of prosecution, therefore, case of the prosecution becomes doubtful.

12. As per version of Police Officer, article was weighed and quantity was found to be 20 kgs. There is nothing to discard the testimony of Police Officer. Testimony of Police Officer cannot be undervalued merely because he is a Police Officer. If this witness has not really weighed the seized article, he is not the real witness and if this witness was suppressing the fact of weighed, then his version is not reliable. On overall assessment of evidence, it is established that the appellant was having commercial quantity of Ganja.

13. Considering all the facts and material on record, this court is of the view that the case laws cited by learned counsel for the appellant are clearly distinguishable from the entire facts and circumstances of the present case.

14 Commercial quantity of Ganja is 20 kgs. In the present case, the appellant was in illegal possession of 20 kgs of Ganja, therefore, the case of the appellant falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed. The trial Court

awarded minimum sentence to the appellant for the said offence and less than minimum sentence cannot be awarded. Sentence part including fine amount is also not liable to be interfered.

15. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju