

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 748 of 2008**

- Smt. Shiv Kumari @ Madhee, w/o. Jagdish Nishad, aged about 40 years, r/o. Vindhya wasini Ward Dhamtari, PS and District Dhamtari (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Dhamtari, District Dhamtari Chhattisgarh.

---- Respondent

For Appellant : Mr. Manoj Mishra Advocate appears as
Amicus Curiae

For respondent/State : Mr. Vinod Tekam, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****12-12-2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-7-2008 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Dhamtari in Special Case No. 28 of 2007, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced her to undergo rigorous imprisonment for two years and to pay fine of Rs.15,000/- with default stipulations.

2. As per prosecution case, on 6-6-2005 Sub Inspector of Police Station Dhamtari namely S.P.Singh (PW/12) received confidential information from Mukhbir that one person is in possession of

contraband article Ganja. He recorded the same in Panchnama and information was sent to superior officer. Two independent witnesses were called and thereafter police personnel and other witnesses reached to the house of the appellant in which 1kg 485 grams of Ganja was found in a bag lying in the bed room of the appellant. Two samples of 50 grams each were separated from the said article and sealed. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) There is non-compliance of Sections 42, 50 and 57 of the Act, 1985, therefore, conviction of the appellant is not proper.
- ii) Contraband article was seized from the house of the appellant in which family members are residing and it is not in exclusive possession of the appellant.
- iii) Seized article Ganja was not deposited in Malkhana of Police Station and sample was received by FSL, Raipur with inordinate delay, therefore, prosecution has not established its case and the appellant deserves to be acquitted.

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.

6. As per version of Sub Inspector of Police Station, S.P. Singh (PW/12), on 6-6-2005 at 2.30 p.m. he received information that the appellant was in possession of contraband article Ganja for sale in her house situated at Gaddapara, Vindvasani, Ward Dhamtari and after receiving the said information he recorded the same in Rojnamcha and sent it to Deputy Superintendent of Police as per Ex.P/17. Again he called two independent witnesses namely Pusram and Ramnath and prepared a Panchnama for search of the house without warrant as per Ex.P/16. The same is mentioned in Rojnamcha as per Ex.P/27. Information was sent to Deputy Superintendent of Police through Constable Heera Singh and after completion of formalities he rushed to the spot with police personnel and independent witnesses and also served notice to the appellant for her search as per Section 50 of the Act, 1985 that she is entitled to be searched by any Gazetted Officer or Magistrate, but she opted to be searched by this witness. After search of the house, article like Ganja was found in a bag kept in bed room of the appellant and after weight it is found to be 1 kg and 485 grams. Two samples of 50 grams each were separated from the said article and sealed separately. All the proceedings were recorded in Rojnamcha and

information regarding seizure and search was sent to Magistrate and Superintendent of Police. He further deposed that seized article was kept in safe custody of Malkhana and it was handed over to Head Constable Lakhanlal Suryavanshi (PW/13). As per version of Head Constable Lakhanlal Suryavanshi (PW/13) he received seized article from Sub Inspector S.P. Singh (PW/12) and same was registered at serial No.120 of the Malkhana register and seized articles were kept in safe custody of Malkhana and samples were sent for examination to FSL Raipur through constable Pramod Pandey. Version of Sub Inspector S.P. Singh (PW/12) is supported by the version of Ganesh Gupta (PW/11) that the house in question is recorded in the name of the appellant in revenue record. It is further supported by version of Vishnu Kumar Gupta (PW/10) that the said house is in possession of the appellant.

7. From the entire evidence, it is established that the said house was in exclusive possession of the appellant. It is further supported by version of PW/8 Khublal Sen (PW/8) who is Revenue Inspector. Constable Heera Singh (PW/4) deposed that information received by the Sub Inspector is sent to Deputy Superintendent of Police Shri Joge as per Ex.P/19 on the same day. PW/2 Santosh Sahu supported the version of Police Inspector that Ganja was seized from the house of the appellant and when it is weighed, the same was found to be 1 kg and 485 grams.

8. From the entire evidence, it is established that information received by the officer was sent to the superior officer as per Section 42(2) of 1985 and same should be sent within 72 hours but in the present case, it was sent on same day, therefore, provision of Section 42(2) of the Act, 1985 is complied with. Again, notice regarding search was given to the appellant as per Section 50 of the Act, 1985 which is compliance of the said provision. The article seized in the present is kept in safe custody of Malkhana which is compliance of Section 55 of the Act, 1985 and sending information regarding seizure to superior officer i.e., Superintendent of Police is compliance of Section 57 of the Act, 1985. Therefore, argument advanced on behalf of the appellant that the mandatory provisions of the Act, 1985 have not been complied with, is not sustainable. Again, there is no material contradiction regarding seizure in the statement of the prosecution witnesses. It is also proved by the evidence of Revenue Officer that the house in question is in exclusive possession of the appellant and this court has no reason to discard the same. Therefore, it is proved that the house was in exclusive possession of the appellant in which contraband article Ganja was found. Argument advanced on behalf of the appellant on this count is not sustainable.

9. Illegal possession of quantity of Ganja is 1kg and 485 grams which is neither small quantity nor commercial quantity, therefore, the case of the appellant squarely falls within offence of Section

20(b)(ii)(b) 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.

10. Accordingly, the appeal is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term, therefore, no further order for her arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju