

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.279 of 2004

Judgment Reserved on : 21.11.2017

Judgment Delivered on : 19.2.2018

Dinesh Dewangan, age 34 years, son of Shri Uttamlal Dewangan, Occupation Hotel Business, resident of Durga Chowk, Rajnandgaon, P.S. Basantpur, District Rajnandgaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Farasgaon, District Central Bastar, Chhattisgarh

--- Respondent

For Appellant : Shri Malay Kumar Bhaduri, Advocate
For Respondent/State : Smt. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 28.2.2004 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Bastar at Jagdalpur in Special Case No.58 of 2003 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(B) of the Act of 1985	Rigorous Imprisonment for 5 years and fine of Rs.20,000/- with default stipulation

2. Facts of the case, in brief, are that on 15.12.2003, Sub-Inspector Arvind Dwivedi (PW1) received information that two persons were carrying contraband article Ganja on a Hero Honda Motorcycle and they were proceeding towards Raipur. The information was

recorded vide Mukhbir Suchana Panchnama (Ex.P1). He forwarded the information to his higher officers telephonically. Thereafter, he along with a raiding party reached the spot and stopped the motorcycle. The Appellant was informed about the secret information received and he was given a notice of search under Section 50 of the Act of 1985 (Ex.P3). The Appellant consented for his search vide Ex.P4. Arvind Dwivedi (PW1) and his staff gave their search vide Ex.P5 in which no objectionable article was found. In search of the Appellant, a *bori* (bag) of manure was recovered from the possession of the Appellant in which Ganja like substance was kept. A panchnama of the search (Ex.P6) was prepared. On being identified, the substance was found to be Ganja. A panchnama of identification of the substance (Ex.P7) was prepared. On being weighed, quantity of the recovered Ganja was found to be 10 Kgs. Weight panchnama thereof (Ex.P8) was prepared. 2 sample packets each of 25 Gms. were prepared vide Ex.P9. The recovered Ganja, the sample packets thereof and the motorcycle were seized vide Ex.P10. The raiding party came back to the police station along with the Appellant and the seized articles. The seized articles were deposited in the Malkhana and an acknowledgement thereof (Ex.P15) was obtained. First Information Report (Ex.P13) was registered by Arvind Dwivedi (PW1). Senior Police Officers were informed about the complete proceedings drawn. Out of the 2 sample packets, 1 packet was sent to the Forensic Science Laboratory for chemical examination vide memo (Ex.P17). FSL Report is Ex.P19 in which the sample was confirmed to be of Ganja. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section

20(b) of the Act of 1985. Charge was framed against him under Section 20(b)(ii)(B) of the Act of 1985.

3. To rope in the Appellant, the prosecution examined as many as 4 witnesses. Statement of the Appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.
4. After Trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the contraband article Ganja was not seized from absolute possession of the Appellant. As per the prosecution story, the Appellant was driving the motorcycle and other person Rahul was a pillion rider. Therefore, it cannot be said that the Appellant had knowledge that the pillion rider was in possession of the contraband article Ganja. The mandatory provisions of Sections 42, 50 and 57 of the Act of 1985 have not been complied with. Independent witnesses have not supported the case of the prosecution. It was further argued that in the notice of search under Section 50 of the Act of 1985 (Ex.P3), it is mentioned that the bag recovered from the Appellant was of black colour, but in the consent (Ex.P4) given by the Appellant for his search colour of the bag is mentioned as green and in the identification panchnama (Ex.P7) the colour of the bag is mentioned as black and in Malkhana Register (Ex.P22C) the colour of the bag is mentioned as green. In the seizure memo (Ex.P10), the colour of the bag is mentioned as green, but there is

over writing on the word of the colour. According to Ex.P9, a specimen seal denoting the words “Police Station Madhya Pradesh” was affixed on the sample packets and the *bori* of Ganja seized, but the FSL Report (Ex.P19) states that a specimen seal denoting the words “Police Station Pharasgaon” was affixed. Therefore, what was the colour of the *bori*/bag which was recovered and seized from the Appellant is not clear. The sample packet prepared at the spot was itself sent to the FSL for chemical examination is also not established. Reliance has been placed on **2007 (1) CGLJ 392 (Ashok Kumar v. State of Chhattisgarh)**.

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
8. Sub-Inspector Arvind Dwivedi (PW1) has stated that on 15.12.2003, he had received information that 2 persons were about to go to Raipur with a contraband substance Ganja on a motorcycle. He recorded the information vide Mukhbir Suchana Panchnama (Ex.P1) and forwarded the information to the Sub-Divisional Officer (Police) vide Rojnamcha Sanha No.662 and 664 and telephonically as well. He went to the spot along with police staff. On the spot, he found 2 persons, i.e., the present Appellant and other person Rahul with a motorcycle. He gave a notice (Ex.P3) for search of the Appellant under Section 50 of the Act of 1985. The Appellant consented for his search vide Ex.P4. He and his staff also gave their search vide Ex.P5 in which no

objectionable article was found. The Appellant was having a bag in which another *bori* of manure was kept. On being searched, Ganja was found therein. A panchnama of the search (Ex.P6) and a panchnama of the identification (Ex.P7) were prepared by him. On being weighed, 10 Kgs. of Ganja was found from the Appellant and 8 Kgs. of Ganja was found from Rahul. Weight panchnama was prepared vide Ex.P8. 2 sample packets each of 25 Gms. were prepared from the recovered Ganja. The sample packets were sealed and a panchnama thereof was prepared vide Ex.P9. The recovered Ganja, the sample packets and the motorcycle were seized vide Ex.P10. After return to the police station, the seized articles were handed over to the Malkhana Moharrir and an acknowledgement thereof (Ex.P15) was obtained. First Information Report (Ex.P13) was registered by him. One of the seized sample packets was sent to the FSL for chemical examination vide Ex.P17. FSL Report is Ex.P19 in which the sample sent for examination was confirmed to be of Ganja. This witness has denied the suggestion that he drew the complete proceedings in the police station itself.

9. Sukhranjan (PW3) is the witness who weighed the recovered Ganja. He has stated that the Ganja was kept on the road near the police station where he had gone and weighed the Ganja and in weight thereof he had found the same to be of 8-10 Kgs. In his cross-examination, he has stated that he did not know to whom the Ganja, which he had weighed, belonged to.
10. Ajay Singh (PW4) is the panch witness. He has stated that the police had caught 2 persons riding on a motorcycle. 1 bag and 1

bori were being carried by them on a motorcycle. In his cross-examination, he has stated that when he reached the spot, he saw that weight of the recovered Ganja was being done, but he has stated that he did not know from whom the Ganja was recovered. Another panch witness Baban has not been examined by the prosecution.

11. Head Constable Shekharlal Kashyap (PW2) is the Incharge Malkhana Moharrir. He has stated that on 15.12.2003, he had deposited 10 Kgs. of Ganja, 2 sample packets each of 25 Gms. and the motorcycle received in Crime No.163/2003. He made entries in the Malkhana Register at Sl. No.141 vide Ex.P22. He issued an acknowledgement of the deposit vide Ex.P15. He has further stated that the proceedings of recovery of Ganja from the Appellant were drawn in front of the police station in his presence.
12. The whole prosecution case is based on the testimony of Arvind Dwivedi (PW1) and Shekharlal Kashyap (PW2). Since both the witnesses are police witnesses, a minute scrutiny of their testimony is essential.
13. As per the Court statement of Arvind Dwivedi (PW1), he had given a notice (Ex.P3) to the Appellant for his search and obtained his consent for the search vide Ex.P4. He had prepared a search panchnama (Ex.P6). He had prepared an identification panchnama (Ex.P7) of the recovered Ganja. He had prepared weight panchnama (Ex.P8) of the Ganja weighed. He had sealed the sample packets and prepared a seal panchnama vide Ex.P9. He had seized the articles vide Ex.P10. As per the prosecution story, all these proceedings were drawn and completed at the spot

itself. From perusal of the record, it reveals that vide Ex.P3, the Appellant was given a notice under Section 50 of the Act of 1985 for search of a black bag kept in his possession. But, in the consent (Ex.P4) obtained from him for the search, the colour of the bag is mentioned as green. Search panchnama (Ex.P6) shows that the seizure of the Ganja was made from a black bag, but the quantity of the Ganja is not mentioned in the panchnama and a blank space is left in the panchnama against the quantity of Ganja. In weight panchnama (Ex.P8), quantity of Ganja and its price have been mentioned with different inks which goes to show that the spaces earlier left blank in the panchnama regarding quantity and price of Ganja were filled-in later on. Again in the seizure memo (Ex.P10), instead of a black bag, seizure of a green bag is shown. As per Ex.P9, a specimen seal of "Police Station Madhya Pradesh" was affixed on the sample packets of Ganja and the same specimen seal was used for the remaining quantity of seized Ganja also, but the FSL Report (Ex.P19) states that the words "Police Station Pharasgaon" were mentioned in the seal of sample packet sent to the FSL for chemical examination. Therefore, it is suspicious that the sample packet which was sent to the FSL for chemical examination was the same packet which was prepared and sealed at the spot.

14. From a minute scrutiny of the evidence available on record, it is clear that the preparation of documents made at the spot is suspicious. It appears that the said documents were collectively prepared later on. Ganja was seized from a black bag or from a green bag is not clear and there is no reason explained by the prosecution regarding this contradiction. The sample packet sent

to the FSL for chemical examination was the same packet which was prepared at the spot is also not established. Thus, the whole prosecution case is doubtful. The case of the prosecution is not proved beyond reasonable doubt. Therefore, the Appellant is entitled to get benefit of doubt.

15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
16. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE