

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 8-10-2018

Judgment delivered on 29-10-2018

CRA No. 6 of 2009

- Bhagwat Prasad Kewat, s/o. Patiram Kewat, aged about 25 years, r/o. Village Banahil, Police Station Ramgarh, District Janjgir-Champa (CG).

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Pamgarh, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Ramakant Pandey, Advocate
For respondent/State	:	Mr. Vivek Sharma, Govt. Advocate

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 22-12-2008 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985) Janjgir, District Janjgir-Champa in Special Criminal Case No. 15 of 2008, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.25,000/- with default stipulations.

2. It is alleged by the prosecution that on 27-8-2008 9 kgs and 100 grams contraband article Ganja, some currency notes and one mobile phone were seized from the possession of the appellant. Upon 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) It is not proved that the appellant was in exclusive possession of Ganja, therefore, finding of the trial Court is bad-in-law.
- ii) Mandatory provisions of the Act, 1985 have not been followed in the present case, therefore, conviction of the appellant is not sustainable.
- lii) Witnesses namely PW/1 Ganesh Ram Soni and Jawahar Khute (PW/2) have been turned hostile and due to their non-support, case of the prosecution is not established.
- iv) Sub Inspector K.S. Nagwanshi (PW/7) is lacking jurisdiction to investigate the matter, therefore, prosecution itself is vitiated.
- v) The trial Court has not considered the fact that the contraband article Ganja was seized from the house and the house is in the name of Patiram, who is father of the appellant, therefore, finding of the trial

Court is liable to be reversed.

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. To substantiate the charge, prosecution examined as many as seven witnesses. As per version of PW/7 K.S. Nagwanshi Sub Inspector, he received information regarding possession of contraband article Ganja by the appellant in his house and thereafter he prepared panchnama of the said information as per Ex.P/1. He further deposed that the said information was sent to Deputy Superintendent of Police and thereafter two independent witnesses namely Ganesh Ram Soni (PW/1) and Jawahar Khute (PW/2) were summoned and thereafter he rushed to the spot with police personnel namely Constable. Balwant, Constable Janakram, Ganesh Ram and Jawahar and on search of the house of the appellant, contraband article Ganja was found which was weighed and found to be 9 kgs and 100 grams. As per version of this witness, he prepared two sample packets each containing 50 grams from the said article which was sealed and thereafter seized articles were kept in the Malkhana of Police Station. He further deposed that the information regarding seizure is sent to office of the Sub

Divisional Officer (Police) and acknowledgement regarding sending of information is Ex.P/21. This witness has been subjected to searching cross examination but nothing could be elicited in favour of defence.

7. It is alleged by the appellant that the house belongs to Patiram who is father of the appellant, but Patiram is not examined by him in his defence, therefore, the story put-forth by the defence is not substantiated by the evidence that Patiram was resident of the said house, therefore, the house in question was in exclusive possession of the appellant and article was seized of the said house is conscious possession of the appellant. Version of this Police Officer is subjected to cross examination, but nothing could be elicited in favour of defence. Version of this witness is supported by version of Head Constable Anil Tiwari (PW/6) who kept the seized article in safe custody of Malkhana and same was handed over to Constable Janakram (PW/3) for depositing the same in FSL which is recorded in Rojnamchasanha. As per version of constable Janakram (PW/3), he deposited the seized sample packets in FSL on 28-8-2008 and acknowledgement for the same was received by him as per Ex. P/15. As per report of FSL (Ex.P.36), test of Ganja was found positive.

8. PW/4 Constable Virendra Bhanu is a person who deposited the information of this case and received acknowledgment as per Ex.P/19. After seizure, information was sent to Sub Divisional

Officer (Police) as per Ex.P/21 as deposed by Asst. Sub Inspector Keertanlal (PW/5). The information received before investigation is sent to higher authorities as per Section 42(2) of the Act, 1985, property was kept in safe custody of Malkhana as per Section 55 of the Act, 1985 and information regarding seizure is sent to higher authorities as per Section 57 of the said Act, therefore, argument advanced on behalf of the appellant that the provisions of the said Act, 1985 have not been followed, is without substance.

9. True it is that seizure witnesses namely Ganesh Ram (PW/1) Jawahar (PW/2) have not supported the prosecution version, but their version is not sufficient to discard testimonies of all the Police Officers who have deposed before the trial Court. If these seizure witnesses were not present during the course of seizure, they are not real witnesses and even after presence and participation in seizure they are denying the same before the court, their version is not reliable, therefore, statement of seizure witnesses is not sufficient to discard the entire evidence adduced by the prosecution.

10. From the evidence, it is established that the appellant was in possession of contraband article Ganja to the tune of 9 kigs and 100 grams which is neither commercial quantity nor small quantity. Therefore, offence of the appellant comes within mischief 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.

11. Heard on the point of sentence.

The trial Court awarded sentence of five years to the appellant for the said offence which cannot be said to be harsh, disproportionate or unreasonable. Sentence part including fine amount is not liable to be interfered with by this court.

12. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds are cancelled. The trial Court will prepare super-session warrant and issue warrant of arrest against the appellant. After his arrest he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial court to submit its compliance report on or before 29-1-2019.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju