

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 113 of 2012

1. T. Narsaiya S/o T. Rajaiya, 34 years, R/o Village & Post-Dharmawaram, Distt. Karimnagar (A.P.)
2. M. Sampat S/o M. Rajaiya, 23 years, R/o Village - Mangalpalli (Godavarikani) Distt. Karimnagar (A.P.)

---- Appellants

Versus

- State Of Chhattisgarh Through - District Magistrate, Jagdalpur, Distt. Bastar C.G.

---- Respondent

For Appellants	:	Shri Keshav Dewangan, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board by Justice Pritinker Diwaker

26/03/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 14.12.2011 passed by the Special Judge (NDPS Act, 1985), Bastar at Jagdalpur in Special NDPS Case No.28/2010, convicting the accused/appellants under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing each of them to undergo RI for 20 years and to pay a fine of Rs.2 lacs, in default whereof to suffer additional RI for three

years.

02. Facts of the case in brief are that on 14.9.2009 at 10 am secret information was received by PW-7 Suresh Kumar Dhruv, Station House Officer, Police Station-Keshkal, that in unnumbered white Maruti Omni car some persons are coming from Jagdalpur side towards Andhra Pradesh, followed by a truck bearing registration No. HR-38 L/9999, carrying ganja in both the vehicles. Said information was reduced in writing in Rojnamchasanha No.11 vide Ex.P/30C and thereafter secret information Panchanama Ex.P/29 was prepared. The said information was forwarded to SDOP, Keshkal through Constable No.1354 and departure of the constable was entered in Rojnamchasanha No.12 vide Ex.P/31C. PW-7 along with staff proceeded towards the spot and the departure was mentioned in Rojnamchasanha No.13 vide Ex.P/33C. The Maruti Van was intercepted, in which three persons namely Alok Gochhed, P. Nagesh and Aman Kumar were found with 26 kg of ganja. Immediately thereafter, the truck bearing registration No. HR-38 L/9999 was intercepted at the check-post and when the driver made an attempt to escape he was apprehended. Witnesses were summoned vide Ex.P/2 and P/3. Upon being asked by PW-7, the driver of the truck disclosed his name as T. Narsaiya (accused/appellant No.1) and its conductor as M. Sampat (accused/appellant No.2). Notice under Section 50 of the Act was given to them, on which they consented orally in presence of witnesses for search of their vehicle by the police vide Ex.P/4. First, the accused persons were allowed to make search of the police personnel and the witnesses, however, on such search being made, nothing objectionable was found from their possession.

When search of the truck in question was made, certain bags containing onion were found vide Ex.P/6 and upon further search, total 105 plastic bags were found in the said onion bags, which contained substance like ganja vide Ex.P/7. On the spot itself the contraband was got examined by the witnesses by way of smelling, tasting and burning, and on the basis of their experience, they found it to be ganja vide Ex.P/8. Thereafter, witness Yasin Memon was given notice under Section 91 of CrPC for weighment vide Ex.P/24 and after physical verification of the weighment brought by Yasin Memon vide Ex.P/9, the contraband was weighed by Yasin Memon vide Ex.P/10 and the bags were marked as Ex.A-1 to A-105. Thereafter, homogenization of the contraband contained in different bags was done vide Ex.P/11. From each of the bags, two samples, each weighing 25 gms, were drawn and as such, total 210 samples were drawn, the samples and the remaining ganja were duly sealed. The panchanama of the sample seal was prepared vide Ex.P/12 and Ex.P/13. On the spot itself, the truck in question along with its key, onion bags, sample packets and the remaining contraband were seized vide Ex.P/14 and likewise, documents of the vehicle were also seized from accused M. Sampat vide Ex.P/15.

The police party returned to police station and entry was made accordingly in Rojnamchasanha vide Ex.P/34C and a detailed report of the entire proceedings was made vide Ex.P/35C. The seized articles were deposited in the Malkhana vide Ex.P/28. Thereafter, offence was registered under Crime No.120/09 under Section 20(b) of the Act vide Ex.P/26. The accused persons were arrested vide Ex.P/16 to P/20.

After completing all the formalities, report was sent to the superior officer i.e. SDOP, Keshkal vide Ex.P/23. On 16.9.2009, the samples were sent to FSL vide Ex.P/37, which was received in the FSL vide Ex.P/38 and its report is Ex.P/39, which confirms the contraband to be ganja. Owner of the truck P. Tirupati, son of Kistaiya, was shown to be absconder and Challan was filed against five accused persons under Section 20(b) of the Act.

03. So as to hold the accused persons, the prosecution examined 07 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting Accused No.3 Alok Gochhed, Accused No.4 P. Nageshrao and Accused No.5 Aman Kumar Dongre of the charge mainly on the ground that they are facing separate trial for carrying 26 kg of ganja in Maruti van, convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

05. During pendency of this appeal, accused/appellant T. Narsaiya has expired and this fact has been confirmed by the State counsel. Accordingly, the instant appeal stands abated insofar as it relates to appellant T. Narsaiya, and survives in respect of accused/appellant M. Sampat only.

06. Learned counsel for appellant M. Sampat submits as under:

- (i) that there is non-compliance of Sections 42(2) of the NDPS Act,
- (ii) that conscious possession of the contraband has not been proved by the prosecution;
- (iii) that the seized contraband was not properly kept in the Malkhana and there is conclusive evidence to this effect.
- (iv) that weighment of the contraband has not been done properly. Even witness to weighment PW-3 Yasin Memon has not supported the prosecution case and has been declared hostile.
- (v) that independent witness to seizure PW-4 Md. Imran Natthani, has not supported the prosecution case.
- (vi) lastly it has been argued that the appellant is in jail since 14.9.2009; the jail sentence as well as the fine sentence imposed on the appellant is very much on the higher side and therefore, the same may be reduced suitably.

07. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State as under:

- that according to PW-7 after receipt of secret information on 14.9.2009 at 10 am, the same was reduced in writing in Rojnamchasanha No.11 vide Ex.P/30C and was forwarded to SDOP, Keshkal through Constable No.1354 and departure of the constable was entered in Rojnamchasanha No.12 vide Ex.P/31C. After completing all the formalities, on 14.9.2009 report was sent to the superior officer i.e. SDOP, Keshkal vide Ex.P/23 which was received by PW-2 Ajay Kumar Tekam,

Reader to SDOP and he has proved the same. Thus, in view of the evidence of PW-2 & PW-7, compliance of Section 42(2) of the Act stands proved.

- admittedly, the contraband was seized from the vehicle in question which was being driven by accused/appellant No.1 T. Narsaiya and accused/appellant No.2 was its conductor and the quantity of the contraband was 3327 kg and therefore, it cannot be said that accused No. 2 was not aware of such a huge quantity of contraband kept in the vehicle and further, no evidence has been adduced on behalf of the defence to substantiate this plea that he was not having any knowledge about the contraband so seized.
- so far as weighment of the contraband is concerned, though PW-3 Yasin Memon, who did weighment, has not supported the prosecution case and has been declared hostile, but from the unrebutted evidence of PW-7 Suresh Kumar (I.O.), which is supported the other witnesses and documentary evidence, it cannot be said that weighment was not done properly.
- though one of the seizure witnesses namely PW-4 Md. Imran Natthani has turned hostile but other witness PW-1 Lekhraj has fully supported the prosecution case.
- as regards the sentence part, the trial Court taking into consideration the huge quantity of contraband, the gravity of the offence and its adverse impact on the society, has rightly sentenced the appellant and as such, no leniency is required to

be shown to him.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Lekhraj Nanwani, seizure witness, has fully supported the prosecution case and stated as to the manner in which the entire proceedings were conducted and completed by the investigating officer and the police staff. Defence has failed to elicit anything from him to make his evidence doubtful or untrustworthy. PW-2 Ajay Kumar Tekam, Head Constable who at the relevant time was working as Reader to SDOP, Keshkal, has duly proved receipt of the reports vide Ex.P/21C to P/23C. PW-3 Yasin Memon who did weighment of the seized contraband has turned hostile. However, he admits his signatures on the documents. PW-4 Mohd. Imran Natthani, seizure witness has also turned hostile but admitted his signature on the documents. PW-5 Surendra Manikpuri is a Constable who took the seized samples to FSL. He has duly supported the prosecution case. PW-6 Omprakash Nareti, who was working Malkhana Muharrir at the relevant time has stated that the seized articles were duly deposited in Malkhana and the samples were in sealed condition. PW-7 Suresh Dhruv, investigating officer, while supporting the prosecution case has stated in detail as to how after receipt of secret information, further necessary proceedings were conducted, the witnesses were summoned, search was made, weighment was done, samples were drawn and sealed; seized articles were deposited in Malkhana, entire proceedings were reduced in writing, a report thereof was forwarded to the superior officer, the samples were sent to FSL and report was obtained therefrom etc. and

finally, charge sheet was filed against the accused persons.

10. Close scrutiny of the evidence makes it clear that on 14.9.2009 at 10 am PW-7 Suresh Kumar Dhruv, Station House Officer, Police Station-Keskal after receiving secret information that in unnumbered white Maruti Omni car some persons are coming from Jagdalpur side towards Andhra Pradesh, followed by a truck bearing registration No. HR-38 L/9999, carrying ganja in both the vehicles, reduced the said information in writing in Rojnamchasanha No.11 vide Ex.P/30C, prepared secret information Panchanama Ex.P/29 and forwarded the said information to SDOP, Keshkal through Constable No.1354. After summoning the witnesses, they were apprised of the secret information and thereafter, PW-7 along with staff and witnesses proceeded towards the spot, the Maruti Van was intercepted, in which three persons namely Alok Gochhed, P. Nagesh and Aman Kumar were found with 26 kg of ganja. Soon thereafter, the truck bearing registration No. HR-38 L/9999 was intercepted at the check-post. Upon being asked by PW-7, the driver of the truck disclosed his name as T. Narsaiya (accused/appellant No.1) and its conductor as M. Sampat (accused/appellant No.2). After giving them notice under Section 50 of the Act and obtaining their consent in presence of witnesses for search of their vehicle by the police vide Ex.P/4, when the vehicle was searched, certain bags containing onion were found vide Ex.P/6 and upon further search, total 105 plastic bags were found in the said onion bags, which contained substance like ganja vide Ex.P/7. Thereafter, weighment of the contraband was got done from Yasin Memon (PW-3) after physical verification of the weighment. After homogenization of

the contraband contained in different bags, from each of the bags, two samples, each weighing 25 gms, were drawn and as such, total 210 samples were drawn, the samples and the remaining ganja were duly sealed, panchanama of the sample seal was prepared vide Ex.P/12 and Ex.P/13 and on the spot itself, the truck in question along with its key, onion bags, sample packets and the remaining contraband were seized vide Ex.P/14 and likewise, documents of the vehicle were also seized from accused M. Sampat vide Ex.P/15. The police party after returning to police station, made an entry in Rojnamchasanha vide Ex.P/34C and a detailed report of the entire proceedings was made vide Ex.P/35C. After completing all the formalities, on 14.9.2009 report was sent to the superior officer i.e. SDOP, Keshkal vide Ex.P/23 which was received by PW-2 Ajay Kumar Tekam, Reader to SDOP and he has proved the same. Thus, in view of the above, complicity of the accused/appellant No.2 M. Sampat in the crime in question stand proved beyond all reasonable doubt and we find no fault on the part of the investigating officer in compliance of Section 42(2) of the Act.

11. So far as conscious possession of the contraband is concerned, we find substance in the argument of counsel for the State that in view of the admitted position that a huge quantity of contraband weighing about 3327 kg was seized from the vehicle in question driven by accused/appellant No.1 T. Narsaiya and of which accused/appellant No.2 was the conductor and particularly, for want of any evidence by the defence which could suggest that appellant No.2 was not having knowledge about the said contraband, it does not appeal to reason that appellant No.2 was not aware of the said contraband.

12. As regards weighment of the contraband, seizure of the articles and deposit of the same in Malkhana, true it is that PW-3 Yasin Memon, who did weighment, has not supported the prosecution case and has been declared hostile and likewise, one of the seizure witnesses namely PW-4 Md. Imran Natthani has turned hostile, however, from the unrebutted evidence of PW-7 Suresh Kumar (I.O.), which is supported the other witnesses and documentary evidence, including the evidence of seizure witness PW-1 Lekhraj and PW-6 Omprakash Nareti, Malkhana Muharrir, it is evident that weighment of the contraband and seizure of the articles were done in accordance with the procedure prescribed under the Act and that the seized articles including the samples were duly deposited in Malkhana in sealed condition.

13. In the present case, though some of the independent witnesses have turned hostile, but the police personnel who assisted in the investigation including other independent witnesses have fully supported the prosecution case. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in

favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

14. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#).].

15. In the present case, though the independent witnesses have not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about search and seizure of the contraband, the defence has utterly failed to elicit anything from them which could suggest that they had any interest or enmity with the accused/appellant for his false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record and in these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

16. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant No.2 in crime in

question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding him guilty under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act cannot be faulted with and the same are hereby affirmed.

17. So far as sentence part is concerned, admittedly, quantity of contraband i.e. 3327 kg in the present case is much more than the commercial quantity and being so, substantive jail sentence cannot be less than 10 years and likewise, fine amount can also not be less than Rs.1 lac as per the statutory requirement. However, in the present case, the jail sentence of 20 years and the fine amount of Rs.2 lacs with default sentence of 03 years, appear to be harsh and excessive. Therefore, keeping in view the principles of law laid down in ***Shahejad Khan Maheeb Khan Pathan Vs. State of Gujarat, (2013) 1 SCC 570*** in relation to quantum of sentence, considering the fact that the incident occurred more than eight years back, the age of appellant No.2 and his poor financial condition, we are of the opinion that ends of justice would be served if the substantive jail sentence is reduced from 20 years to 15 years and the fine amount is also reduced from Rs.2 lacs to Rs.1 lac and likewise, the default sentence is reduced from 03 years to 06 months.

18. In the result:

- The instant appeal insofar as it relates to appellant No.1 T. Narsaiya stands abated and is dismissed as such.
- However, the appeal is allowed in part in respect of appellant No.2 M. Sampat. While maintaining conviction of appellant No.2

M. Sampat under Section 20(b)(ii)(C) of the Act, his substantive jail sentence is reduced to RI for 15 years from RI for 20 years and the fine amount is also reduced from Rs.2 lacs to Rs. 1 lac and likewise, the default sentence is also reduced from RI for 03 years to RI for 06 months. He is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Sanjay Agrawal)
Judge