

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 646 of 2015**

- Toranlal Sahu S/o Firan Lal Sahu, Aged About 48 Years, R/o Village Rohasi Police Station Palari, Civil And Revenue District Baloda Bazar Bhatapara, Chhattisgarh, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through The Station House Officer, Police Station Pallari, Civil And Revenue District Baloda Bazar Bhatapara Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	: Shri Vikas Pradhan, Advocate.
For Respondent/State	: Shri Anant Bajpai, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****16-11-2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 14-05-015 passed in Special Sessions Case (N.D.P.S.) No.01/2015 by the Special Court (N.D.P.S. Act) Balodabazar, C.G., convicting the appellant under Section 20(B)(ii) (c) of the N.D.P.S. Act and sentencing him with R.I. for 10 years and fine of Rs.1,00,000/- with default stipulation.
2. The prosecution case, in brief, is this, that police personnel of P.S. Palari, Distt. Balodabazar Bhatapara, made search of the residential house of this appellant and recovered 24.6 kg Ganja from his possession after following the provisions of the N.D.P.S. Act. After completion of the investigation charge sheet was filed in this case.
3. The appellant was charged with offence under Section 20(B)(ii)(c) of the N.D.P.S. Act , to which he denied and prayed for trial.

4. After completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. After completion of the trial, the impugned judgment has been passed wherein the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that while making search and seizure of the house of the appellant the mandatory provisions of the N.D.P.S. Act were not followed. The appellant was never served with the notice under Section 50 of the N.D.P.S. Act. The other infirmity that has occurred in this case is this, that the lodger of the FIR and the Investigator is the same person, which has been strongly deprecated by Hon'ble the Supreme Court in the matter of **Mohan Lal Vs. The State of Punjab**, (2018) 2 SCeJ 1314 and the law laid down, that in such cases it would not amount to fair investigation and the trial would itself be vitiated. It is further submitted that the independent witnesses of search and seizure have not supported the prosecution case. Hence, for these reasons, the appellant was clearly entitled for acquittal in this case.
7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made and submits that the prosecution has proved its case beyond reasonable doubt. Hence, there is no room for interference in the impugned judgment.
8. Heard learned counsel for the parties and perused the record of the

trial Court.

9. Inspector Brijesh Kumar Tiwari (PW-6) received a confidential information from some informer and on that basis he proceeded to the spot after giving information to the superior authority in accordance with Section 42 of the N.D.P.S. Act. He has stated that after serving a notice (Ex.-P/4) on the appellant, he got his consent vide Ex.-P/5 to get his house searched by him. After initial formalities the house of the appellant was searched, in which 24.6 kg. of contraband article was recovered from the possession of the appellant kept in various polythene packets. The recovery memo is Ex.-P/7. The recovered article was identified as Ganja vide Ex.-P/8 and the recovered article were also seized vide Ex.-P/9. The weightment procedure, sampling procedure and sealing of the article were also done on the spot and thereafter, this witness himself lodged one unnumbered FIR on the spot vide Ex.-P/17 which was again registered in the police station as Ex.-P/18 by this witness himself. He has stated that after sending the samples for FSL examination, he recorded the statement of the witnesses and also completed the investigation in this case.
10. The independent witnesses of search and seizure, Deepak Kumar (PW-1) and Manik Das (PW-2) both have not supported the prosecution case, because of which, they were declared hostile and cross-examined by the prosecutor, but even then they have not supported the prosecution case in any manner.
11. Consideration on the evidence of these witnesses is sufficient to

come to conclusion in this case. The statement by Inspector Brijesh Kumar Tiwari (PW-6) itself makes clear that he was the person who received information, made search, seizure of the contraband article and then has himself lodged the FIR and also completed the investigation by recording the statement of the witnesses under Section 161 of the Cr.P.C. which is clearly a part of investigation.

12. In the matter of **Mohan Lal Vs. The State of Punjab** (supra) it has been held by Hon'ble the Supreme Court in paragraph No.14 of said judgment that:-

“14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.”

- The three judges Bench has laid down the law as under in paragraph 25 of the said judgment:-

“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

13. After due consideration of the evidence and the circumstances of this case, I am of this opinion that in this case the investigation and the prosecution is clearly hit by the law laid down by Hon'ble the Supreme Court and as such, the conviction cannot be sustained.
14. Consequently, the appeal is allowed. Conviction of the appellant under Section 20(B)(ii)(c) of the N.D.P.S. Act is hereby set aside. The appellant is acquitted of the charge framed thereunder. He be set at liberty forthwith if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge