

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1265 of 1999**

- Ram Sai Panika, S/o Chamru Panika, aged about 56 years, occupation Agriculturist, Resident at village Chakdar Police Station Sonhat, District Surguja (M.P.) (Now C.G.)

**----Appellant****Versus**

- State of Madhya Pradesh (Now C.G.), through Police Station Sonhat, District Surguja, M.P. (Now C.G.)

**---- Respondent**


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| For Appellant        | Shri T.R. Chandrakar, Advocate. |
| For Respondent/State | Shri Adhiraj Surana, Dy. G.A.   |

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**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board****20.07.2018**

1. This appeal arises out of the judgment of conviction and order of sentence dated 09.04.1999 passed by Special Judge (NDPS Act), Surguja, Ambikapur, M.P. (Now C.G.) in Special Case No.193/88, convicting the accused/appellant under Section 20(a) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'Act') and sentencing him to undergo RI for 8 months and to pay a fine of Rs.500/-, in default of payment of fine, to further undergo SI for 60 days.
2. Facts of the case, in brief, are that on 23.08.1997 at about 3:00 pm, PW-6 R.K. Mishra, S.O., who was posted at Police Station Sonhat, District Korla M.P. (Now C.G.), when he was patrolling in the afternoon, received information from the informant about the illegal cultivation of *Ganja* plants at village Chakdar in the field of Ram Sai Panika appellant/accused. He went to the house of

accused/appellant along with Police Party, including independent witnesses Mardan Singh PW-2 and Laxman Sai PW-3. Ex.P-6 Notice for search was given to the appellant/accused. He gave his consent and in search 37 plants of *Ganja* were seized from the field of accused/appellant as per seizure memo vide Ex.P-2 prepared at the spot and the arrest memo Ex. P-4. *Dehati Nalishi* Ex.P-13 was recorded by PW-6 R.K. Mishra and after returning to police station FIR Ex.P-14 was also recorded by PW-6 R.K. Mishra. The seized articles were deposited in the Malkhana of the Police Station as per Ex.P-15. *Roznamcha Sahana* Ex.P-10(C) recorded regarding procedure laid down by R.P Sahu PW-4. Information regarding arrest of the appellant/accused was also given to the concerned Superintendent of Police. As per Ex.P-11, an information was sent to the Higher Authority regarding seizure and search Ex.P-12.

3. After completion of the investigation, the charge sheet was filed against the appellant under Section 20(b) read with Section 8 of NDPS Act and while framing the charges, the trial Judge framed the charge against the accused/appellant under Section 20(a) read with Section 8 of NDPS Act.
4. So as to hold the accused/appellant guilty, the prosecution examined has examined 6 witnesses. Statement of accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence no witnesses have been examined by the appellant/accused.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
6. Learned counsel for the appellant submits:-
  - i) that the contraband *Ganja* plants were not seized in the field of appellant/accused bearing survey No.16.

- ii) that there is non compliance of Section 50 and other mandatory provisions of the NDPS Act.
  - iii) that there is no independent witness supporting the prosecution that contraband articles were seized from the appellant's field.
  - iv) that relating to ownership and possession of survey No.16, no documents were produced before the trial Court.
  - v) that looking to the age of the accused/appellant which is near about 76 years, it would be appropriate to sentence imposed upon him may be reduced to the period already undergone by him.
7. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that accused/appellant is the owner and possession holder of the land, which was proved by PW-1 Navi Rassul, Patwari of the village and it is also proved through original record of Kistbandi Khatoni and Khasra. The statement of PW-1 was not challenged in any cross examination and appellant/accused in his statement under Section 313 Cr.P.C admitted that land belongs to where he was cultivating and as such there is no illegality or infirmity in the judgment of trial Court warranting interference by this Court.
  8. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
  9. PW-6 R.K. Mishra, S.O. has specifically stated in his statement that he got information from the informant about the illegal cultivation of Ganja plants at village Chakdadh in the field of Ram Sai Panika appellant/accused. He went to the house of accused/appellant along with Police Party and independent witnesses Mardan Singh and Laxman Sai. Notice for search was given to the appellant/accused. He gave his consent and in search 37 plants of *Ganja* were seized from the field of accused/appellant as per seizure memo Ex.P-2 and after smell

he found that they were *Ganja* plants and thereafter he prepared Panchnama Ex.P-3.

10. PW-2 Mardan Singh and PW-3 Laxman Sai who are independent witnesses of seizure Ex.P-2, Panchnama Ex.P-3 and arrest memo Ex.P-4. Both witnesses have admitted that they have signed on the documents Ex.P-2, Ex.P-3 & Ex.P-4 and their signature were present in documents. Both witnesses have proved this fact also on the date of incident Police Officers came at the village and prepared documents Ex.P-2, Ex.P-3 and Ex.P-4. But both witnesses have been declared hostile by prosecution and they have not supported the prosecution case.
  
11. PW-6 R.K. Mishra complied with the procedure as per the act and seized contraband as per Ex.P-2, prepared panchnama as per EX.P-3 & arrest memo Ex.P-4. The statement of witnesses also recorded and information given to appellant/accused as per Ex.P-6. *Dehati Nalishi* Ex.P-13 and FIR Ex.P-14 recorded against the appellant/accused and where he explained why he was immediately rushed to the place of incident. After completion of registration of FIR he immediately informed the incident to Superior Officer, Superintendent Police, Sarguja via wireless as per Ex.P-11. He recorded leaving and returning time to Police Station as per Roznamcha Sahana Ex.P-9C and Ex.P-4C. The seized samples were deposited in the Malkhana register Ex.P-15 and intimation given to the concerned Magistrate and Ex.P-16 *Daak Book* was also prepared by PW-6 R.K. Mishra. The FSL report Ex.P-17 confirmed that the seized plants were of *Ganja*. Entire evidence of PW-6 R.K. Mishra is not challenged in cross examination and only formal question was put in cross examination. There is no reason to disbelieve the evidence of PW-6 S.O R.K. Mishra, PW-4 R.P. Sahu & PW-5 H.R.P. Chaudary. Accused/appellant has taken the defence in his examination under 313 Cr.P.C. that he was falsely implicated. But there is no single reason to accept his defence and no any evidence available on record to accept the contents of the accused/appellant.

12. As per the above discussion and considering the facts and circumstances of the case in hand, in view of what has been discussed above, this Court is of the considered opinion that the prosecution has proved its case beyond all reasonable doubt and the Court below was fully justified in convicting the appellant for the aforesaid offence. No interference with the finding of the trial Court is called for.

13. For the foregoing, the Appeal is partly allowed. Conviction imposed on the appellant under Section 20(a) read with Section 8 of the Act is maintained. The appellant has remained in jail for about 3 months. The offence occurred in the year 1997 and at that time the appellant was aged about 56 years and now he must be aged 76 years. Therefore, ends of justice would be served, if the appellant is sentenced to the period already undergone by him. It is ordered accordingly. However, the fine amount of Rs.500/- is enhanced to Rs.3,000/-. It is stated that the appellant/accused is on bail since 15.11.2002, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-  
Gautam Chourdiya  
Judge