

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 632 of 2002

Rajvatin Malekar W/o. Rajesh Verma, Aged about 30 years (House Wife) R/o. Dornapal Nakapara District Dantewada (C.G.)

---- Appellant

Versus

State of Chhattisgarh through Police Station Bodhghat, District Bastar (C.G.)

---- Respondent

For Appellant	:	Ms. Sangita Mishra, Advocate.
For Respondent	:	Mr. Lav Sharma, Panel Lawyer

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

17.02.2018

- 1) This appeal is preferred against the judgment of conviction and order of sentence dated 11.03.2002 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Bastar at Jagdalpur in Special Criminal Case No. 4/2002, wherein the trial Court convicted the accused/appellant under Section 20 (B) (ii) (b) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 3,000/-, in default of payment of fine, to further undergo rigorous imprisonment for four months.

- 2) As per the prosecution case, on 08.01.2002 Sub Inspector S. R. Netam of Police Station Bodhghat received an information that one lady is transporting illegal contraband Ganja from village Dornapal and she is sitting in a bus going towards Durg. Head constable Ramphal Yadav, posted in Police Chowki Jagdalpur had alighted the lady from bus and made her to seat in the bus stand. Police recorded this information in Rojnamchasanha No. 407 Ex.P-5 and sent information to his Superior Officer City Superintendent of Police, Jagdalpur. After reaching the spot he informed the appellant of her right for search by any Gazetted Officer or Executive Magistrate or she can be searched by him. He issued notice Ex.P-9 to the appellant and she consented to be searched by him. After searching she was found to be in possession of Ganja in a plastic bag. The seized Ganja was measured and found to be 8.500 KG. Two sample of 25-25 grams were separated from the said articles and sealed in the presence of witnesses and rest of Ganja was sealed in different packet. Seized articles were handed over to In-charge of Malkhanan of the said Police Station who was Head Constable B.P. Joshi and the same was sent for examination to Forensic Science Laboratory, Raipur for chemical examination where after examination seized article is found to be Cannabis/Ganja. All legal formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellant in the Court of Special Judge NDPS Act, 1985,

wherein the Special Judge NDPS Act framed charges as mentioned above to which the appellant did not plead guilty. The Special Judge, NDPS Act, 1985 conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded and after completion of trial, the Special Judge considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.

- 3) Learned counsel appearing for the accused/appellant submits that the prosecution has not examined independent witnesses even head constable Ramphal Yadav who has given information regarding offence, therefore, case of the prosecution is suspicious. She submits that the prosecution has failed to establish that seized article belong to the appellant which was kept in a suitcase. She further submits that the trial Court by not marshaling the evidence in right perspective came to wrong conclusion.
- 4) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
- 5) I have heard counsel for the parties and perused the material on record.
- 6) To substantiate the charge prosecution has examined 4 witnesses.

- 7) S.R. Netam (PW-4) is a person who investigated the matter right from beginning. As per version of this witness he received information that appellant is transporting illegal contraband Ganja from village Dornapal and she is sitting in a bus going towards Durg. She has been alighted from bus. The witnesses reached to the spot. He further deposed that he has informed the appellant of her right of search by any Gazetted Officer or Executive Magistrate or he can be searched by him but she opted to be searched by the said police officer. After searching she was found in possession of Ganja like substance which she kept in a plastic packet. The substance was seized in the presence of the witnesses and weighed on the spot and handed over to head constable B.P. Joshi (PW-3). B.P. Joshi (PW-3) supported the version of Sub Inspector S. R. Netam. As per version of this witness he kept the seized articles in Malkhana and for that he made entry at Sr. No. 6, on 09.01.2002. He further deposed that the said articles were sent for examination to Forensic Science Laboratory, Raipur on 10.01.2002 through head constable Nakul Sahu and as per report of laboratory test of ganja was found positive.
8. True, it is that some witnesses have not been examined but the same is not sufficient to discard the evidence of Sub-Inspector S.R. Netam (PW-4). Statement of any police officer cannot be under valued only because he is a police officer. In the present case, all proceedings have been recorded on the date of incident and all written papers are filed with the charge sheet and proved by Sub-Inspector S.R. Netam

(PW-4). Head constable B.P. Joshi (PW-3) the person who took weight of substance, Atul Kumar Dubey (PW-2) and constable Ku. Vandana Singh (PW-1). Lacuna of non-examination of seizure witnesses is curable by examination of other witnesses who present on the spot, therefore, trial cannot be vitiated and evidence cannot be rejected on that count.

- 9) On over all assessment of the evidence, I am of the view that factum of seizure of Ganja is established and there is no provision in the Act for licensing the said articles. Possession itself is made punishable and when the conscious possession of the appellant was proved before the trial Court, the finding arrived at by the trial Court is not perverse and it can not be said that the trial Court has considered irrelevant and extraneous material and it would not be proper to reverse the finding of the court below. Sentence part is also proportionate and not liable to be disturbed.
- 10) For the foregoing, the appeal fails and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE