

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 638 of 2002

Sunita Mando, D/o. Narayan Mando, Aged 25 years, Occupation Labour, R/o. Bazarpara, Sukma, P.S. Sukma, District Dantewada (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Frezerpur, District Jagdalpur (C.G.)

---- Respondent

For Appellant : Mr. Subhash Yadav, Advocate
For Respondent : Mr. Prasoon Bhaduri, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

18.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.04.2002 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985), Bastar at Jagdalpur in Special Criminal Case No. 09/2002, wherein the said Court convicting the accused/appellant under Section 20 b (ii) (B) of the Act, 1985 and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 3000/- with default stipulation.

2. As per prosecution case, S.L. Sinha (PW-4) posted as Assistant Sub Inspector in Police Station Frezerpur. On 05.02.2002 at about

5.30 pm, he received an information that at B.R.Cold Storage the appellant was having illegal contraband Ganja in a bag. After receiving information, the Police swung into action and rushed to 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-3 to the appellant and she consented to be searched by him vide (Ex.P-22). He searched the appellant and Ganja like substance was found in her bag. In presence of independent witnesses he prepared Panchnama as per Ex.P-7. After searching she was found to be in possession of Ganja in a plastic bag. The seized Ganja was measured and found to be 8.00 KG. Two sample of 50-50 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 Imanul Kerketta (PW-3) 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 seizure witnesses have turned hostile and factum of seizure is not proved. He submits that notice given to the appellant is not in the fitness of the procedure and the same is against the provision of Section 50 of the act and other provisions of Sections 41, 42, 52, 53, 55 and 57 of the Act are not complied with, therefore, conviction of the appellant is not sustainable. He 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 5 witnesses.

7. Assistant Sub Inspector S.L. Sinha (PW-4) is a person who investigated the matter right from beginning. As per version of this witness he received information that appellant was keeping some contraband articles on 05.02.2002 at about 17.20 pm. Upon, information he reached 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 bag. The substance was seized in the presence of the witnesses and weighed on the spot and handed over to head constable Imanul Kerketta (PW-3). This witnesses deposed that the said articles was subjected to balance and in two packets total quantity was found to be 8.00 KG. Two separate samples of 50-50 gram were separated and all the articles were seized. Head constable Imanul Kerketta (PW-3) is the incharge of the Malkhana and kept the articles in safe custody. As per version of S.L. Sinha (PW-4) the seized articles sent for chemical examination by constable No. 643 Prem Lakda and as per report of Laboratory test of Ganja was found positive.

8. The witness was remained firm during searching cross-examination and there is nothing to disbelieve the same. True, it is that Rajesh Kumar Chandel (PW-2) and Laxman Das Bachwani (PW-1) have not supported the version of Police Officers S.L. Sinha (PW-4) but the same is not sufficient to discard the version of S.L. Sinha (PW-4), statement of any police officer cannot be discarded on the ground that he is a Police Officer.

9. From the statement of S.L. Sinha (PW-4) it is established that bag was kept by the appellant in her possession which was seized. It is not search of person for which provision of Section 50 is attracted. 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.L. Sinha (PW-4).

10. 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. For the foregoing, the appeal fails and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh