

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 883 of 2002**

- Mikhail Son of Kunti, Gavir, aged about 20 years (Labour), resident of Raibanka, P. S. Odewa district- Gajpati (orissa).

---- Appellant

Versus

- The State of M.P. (Now Chhattisgarh) through Police Station GRP Bhilai District- Durg (Chhattisgarh).

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate

For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****07.08.2018.**

1 This appeal arises out of the judgment of conviction and order of sentence dated 01.07.2002 passed by the Special Judge Special Court of (NDPS Act), Durg in Special Criminal Case No. 02/2002, convicting the accused/appellant under Section 20(b) (i) read with Section 8 (c) of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act") and sentencing him to undergo RI for 3 years, and to pay fine of Rs.10,000/-, and in default of payment of fine, to further undergo RI for 1½ years.

2. Facts of the case in brief are that on 03.02.2002, Sub Inspector S. K. Pandey (PW-2) received secrete information through informer

that some passengers coming from Orissa carrying ganja in Puri Ahamdabad Express Train. PW-2 S. K. Pandey reduced information in writing vide Ex. P/1, Ex. P/22-A and information sent to his superior Officer vide Exs.P/23-A received by Superior Officer vide Ex.P/24-A & Ex. P/25-A and after preparing panchanama of the notice, proceeded for search alongwith witnesses and staff and reached Power House Railway Station at about 04.00 A.M., where accused/appellant coming out from the compartment of the train. Notices for search under Section 50 of the NDPS Act was given to the appellant vide Exs.P/03, to which the appellant consented for search by S. K. Pandey, Investigating Officer (PW-2). As per Ex. P/8 the police officers gave their personal search. Upon search being made, accused was found in possession of 7.00 kg ganja like substance Vide Ex.P/6. This apart, one railway ticket was also seized from the accused/appellant. Search panchnama was prepared Vide Ex. P/7. On weighment of the contraband being done, it was found to be 7.00 kg. The contraband was tested by rubbing and smelling and was found to be ganja vide Ex.P/4. Out of the said contraband, two samples, each of 50 gm, were drawn vide Ex.P/5 seizure memo is prepared vide Ex. P/11 and extra luggage charge-sheet receipt prepared vide Ex. P/12. After reaching police station vide Ex.P/14, all the seized articles were deposited in Malkhana. FIR vide Ex. P/13 was registered under the Crime No. 39/2002 by S.I. Shri S. K. Pandey against the appellant under Section 20(b) of NDPS Act. Information regarding arrest of the appellant was given to the Superior Officer vide Ex.P/23-A. Vide Ex.P/24-A proceeding for search mentioned in Roznamchasana and after returning and after completion of proceeding of the search vide Ex. P/26-A the information of the entire proceedings was passed to the police Station concerned and two samples drawn were sent to FSL vide Ex.P/20 a report was received from FSL confirming the contraband to be ganja.

3. After completion of investigation, charge sheet was filed against

the appellant under Section 20(b) of NDPS Act.

4. So as to hold the accused/appellant guilty, the prosecution examined four witnesses in all. Statement of the 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. Accused examined himself as defence witness as (DW-1).

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 that there is non-compliance of mandatory provisions of Sections 42 and 50 of the NDPS Act and evidence available on records and the witnesses are not supported the prosecution case. He further submits that the learned special Judge has believed the statement of S. K. Pandey (PW-2), Investigating Officer but he is not reliable and shown to be a interested witness and conviction and sentence passed by the Special Judge is contrary to law.

7. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in light of the provisions of the act and as such there is no illegality or infirmity in it 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. S. K. Pandey, Investigating Officer (PW-2), when received information from informant, he prepared information notice vide Ex. P/1, and after receiving the information he gave notice to independent witness as per Ex. P/2 and the information, which was received from informant, also intimated his Superior Officer and thereafter he alongwith independent witness had gone to Power House Railway Station for search of Ahmadabad Puri Express. During the search, accused/appellant was found with one suitcase coming outside from the compartment of the train. According to Ex. P/3, search notice was given to the accused and explained the facts and after giving notice, the search was made. Upon being search, in the suitcase some objectionable material ganja was seized as per physical verification Vide Ex. P/4 and waighing the all contents received from accused was found to be 7.00 kg and divided into two packets for sample, each contains 50 grams vide Ex.P/5. The ticket of the train of accused was also seized from him. According to ExP/12, extra luggage was also seized from the accused/appellant. After completion of search they returned police station with the accused and seized articles and lodged FIR vide Ex.P/13 against the appellant and seized articles were deposited in Malakhana vide Ex.P/14. As per Ex.P/9 accused arrested, with regard to information given by Investigating Officer to his Superior Officer vide Ex.P/23-A. The articles sent for FSL and the

FSL report confirmed the contraband article seized from the accused was to be the ganja.

10. There is no reason to disbelieve the evidence of S. K. Pandey (PW-2), Investigating Officer as there is no contradiction and omission in his statement. Investigating Officer S. K. Pandey (PW-2) has completed all the proceeding bonafidly, and fairly investigate the matter and arrest the appellant/accused and likewise there is no such non-compliance of the mandatory provisions contained in NDPS Act by the Investigating Officer, which could affect the credibility of the prosecution case.

11. Prakash Tandi (PW-1) and Mohanlal (PW-3), local resident of Bhilai are the independent witness and have also supported the prosecution case. They stated that in their presence, all the procedure made by Investigating Officer Shri S. K. Pandey. they also stated in para 1 and 2 of their statement that when the information received by informer, Shri S. K. Pandey I. O. alongwith both of them search the Ahamdabad Puri Express. Upon being search appellant was found with one suitcase and in that suitcase seized contraband (ganja) was found in his possession. The procedure as per Exs. P/2/3/4/5/6/7/8 followed by the I. O. and all the document mentioned above is prepared in presence of them. Therefore, there is no any reasons to disbelieve to all the witnesses produced by the prosecution.

12. The accused/appellant has taken this defence in his statement

recorded under Section 313 of Cr. P. C. that the Police Officer has falsely implicated him in the crime in question but there is no reason offered by accused/appellant why falsely implicated him. As a defence witness he has taken the same plea stated above in his defence. The Police Officer met with the accused/appellant first time at the time of search/investigation, therefore, the reason given by accused/appellant for falsely implicating him is loses its efficacy.

13. Considering the overall evidence on record oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding the appellant under Section 20(b) (i) read with Section 8 (c) of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS Act") cannot be faulted with and the same are hereby affirmed.

13. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

14. As it is reported that appellant/accuse- Mikhail be released after completion of his sentence awarded to him by the trial Court, therefore no further order is required regarding his arrest.

Sd/-

(Gautam Chourdiya)
Judge