

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.454 of 2001

Dhaniram, S/o Pakdu alias Fagdu, age 45 years, Occupation Agriculture, R/o Village Jaampara, Seoni, Police Station Narayanpur, Tahsil Narayanpur, District Jagdalpur, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through Police Station Narayanpur, District Jagdalpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri R.N. Jha, Advocate
For State/Respondent	:	Shri Neeraj Kumar Sharma, Deputy Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

1.2.2018

1. This appeal has been preferred against the judgment dated 1.5.2001 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act of 1985'), Jagdalpur in Special Case No.42 of 2000 convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(a) of the Act of 1985	Rigorous Imprisonment for 2 years and fine of Rs.3,000/- with default stipulation
Under Section 20(b)(i) of the Act of 1985	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.2,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 19.8.2000 at about 2:00 p.m., Assistant Sub-Inspector S.L. Sinha (PW1) received a secret information that the accused/Appellant had kept Ganja in a plastic bag at the edge of the wall situated within *Badi* (fence) just adjacent to his house and farm and he had also kept plants of Ganja to sell. The information was recorded vide Panchnama

(Ex.P1). The matter was informed to the S.D.O. (P.), Narayanpur vide Panchnama (Ex.P2). S.L. Sinha (PW1) went to the spot. On being asked, the Appellant told him that the *badi* and the house was his own. He gave a notice under Section 50 of the Act of 1985 (Ex.P3) to the Appellant. The Appellant consented for his search vide Ex.P4. On being searched, a bag of manure was found and 500-550 plants of Ganja were kept near the wall of *badi*. Identification Panchnama (Ex.P10) was prepared. Weight Panchnama (Ex.P11) was prepared. Two sample packets each of 30-30 grams of Ganja were prepared. On being counted, total 736 plants of Ganja were found. Two sample packets each of 30-30 grams were prepared from the leaves and blooms of the Ganja plants. The sample packets were sealed and specimen seal was prepared vide Ex.P13. All the articles were seized from the spot vide Ex.P14. After return to the police station, Assistant Sub-Inspector S.L. Sinha (PW1) registered First Information Report (Ex.P20). He sent the sample packets to the FSL for chemical examination vide memo (Ex.P22). FSL Report is Ex.P23 in which the samples sent for examination were found to be of Ganja. Spot-map (Ex.P15) was prepared. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 8, 20(b)(i) of the Act of 1985. Charges were framed against him under Sections 20(b) and 20(a) of the Act of 1985.

3. In support of its case, the prosecution examined as many as 5 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.

4. The Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the *badi* (fence) from where the plants of Ganja and the bag alleged to have containing Ganja were seized was easily accessible to anybody and, therefore, there is possibility that somebody would have kept those articles there. There is no conclusive evidence on record to establish that the said *badi* and the house were in exclusive ownership and possession of the Appellant. As per the Kistbandi Khatauni (Ex.P26), the house and the *badi* in question were recorded in the names of Rajman, Raiju, Raisingh, Jhunki, Baihe and Jhalari, that is to say, not in the name of the Appellant.
6. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Assistant Sub-Inspector S.L. Sinha (PW1) has stated that on 19.8.2000 at about 2:00 p.m. he received a secret information. He forwarded the said information to the higher officer vide Ex.P2. He went to the spot. He intimated the Appellant about the secret information. He gave him a notice under Section 50 of the Act of 1985 (Ex.P3). The Appellant gave consent for his search vide Ex.P4 and P5. On being searched, Ganja like substance was found in a bag of manure. He prepared Search Panchnama (Ex.P7). He also found 500-550 plants of Ganja. He prepared Seizure Panchnama thereof (Ex.P9). He also prepared an

Identification Panchnama (Ex.P10). 2 sample plackets each of 30-30 grams of recovered Ganja and 2 sample packets each of 30-30 grams of leaves and blooms of recovered plants of Ganja were prepared and sealed by specimen seal (Ex.P13). All the articles were seized from the spot vide Ex.P14. After return to the police station, he registered the FIR (Ex.P20). The sample packets were sent to the FSL for chemical examination vide Ex.P22. FSL Report is Ex.P23.

9. Birendra (PW2) and Gangaram (PW3) did not support the case of the prosecution and have been declared hostile. Patwari Daman Singh (PW4) has stated that on being demanded by the police, he had supplied revenue document (Ex.P26). He had also prepared spot-map (Ex.P27). He admitted that Ex.P26 does not include the name of the Appellant as an owner of the house and *badi* in question. Rather, names of Rajman and others are recorded in Ex.P26 as the owners of the house and *badi*. He has further admitted that there is no document available on record to show that the land in question was in possession of the Appellant.
10. From the above, even if the testimony of Investigating Officer S.L. Sinha (PW1) is taken as it is, the same does not get support from the testimony of Patwari Daman Singh (PW4) and Ex.P26 wherein it is stated that the owners of the land in question were Rajman and others and not the Appellant. There is nothing on record to show that the land in question was in possession of the Appellant. In these circumstances, if the Ganja and the plants of Ganja were seized from the aforesaid open place, it does not establish that the Appellant was in exclusive possession of the seized Ganja and the plants of Ganja. Apart from this, as mentioned in Ex.P11, the

sample packets prepared were marked as A1, A2 and B1, B2 and as mentioned in Ex.P13, i.e., specimen seal panchnama, the seal which was affixed on the sample packets was named and styled as “Police Station Narayanpur (M.P.)”. It is not stated by S.L. Sinha (PW1) that after return from the spot, where did he keep the seized articles. According to the FSL Report (Ex.P23), the sample packets marked as A1 and B1 were received in the FSL on 25.8.2000, but there is no mention in Ex.P23 about finding of any specimen seal on the sample packets A1 and B1. In these circumstances, it is also doubtful that the sample packets received and examined in the FSL were the same sample packets which were prepared at the spot. Thus, the offence alleged against the Appellant is not proved beyond reasonable doubt. The Appellant is, therefore, entitled to get benefit of doubt.

11. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
12. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
13. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge