

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 664 of 2001**

Balvant Lodhi, s/o. Shiv Prasad Lodhi, 20 years, r/o. Dhimari,  
Sheetla para, Police Station and Tahsil Bemetara, District  
Durg (CG). ---Appellant

Vs

State of Chhattisgarh through District Magistrate, Jagdalpur,  
Distt. Bastar (CG).

- Respondent.

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For Appellant : Mr. Mayank Chandrakar, Advocate  
For respondent/State : Mr. Bhaskar Payasi, Panel Lawyer

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**Hon'ble Shri Justice Ram Prasanna Sharma****Order on Board****12-04-2018**

This appeal is preferred against the judgment of conviction and order of sentence dated 29-6-2001 passed by the Special Judge (Narcotic Drugs and Substance Act, 1985) Bastar at Jagdalpur in Special Case No. 66 of 2000, wherein the trial Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (B) of the Narcotic Durgs and Substance Act, 1985) sentenced him to undergo rigorous imprisonment for one year and six months and to pay fine of Rs.2000 with default stipulations.

2. As per prosecution case, on 21-12-2000 Sub Inspector S.R. Netam (PW/4) received information that two persons carrying Ganja are sitting near Anand Dhaba. He recorded

the information and sent the same to Additional Superintendent of Police, Jagdalpur on the same day and thereafter he along with his team reached to the spot and informed the appellant about his right to be searched by any Gazetted Officer or Magistrate, but the appellant opted for search by the said Police Officer and after searching the appellant was found to be in possession of one bag and the quantity kept in the bag was subjected to physical balance and weight of the said quantity is 4.500 grams of Ganja. Two samples of 25 grams each were prepared from the said article and all the articles including samples were sealed on the spot. The seized articles and samples were sent to Incharge of Malkhana of the said Police Station and samples were sent for chemical examination Forensic Science Laboratory, Raipur. The report of the laboratory was presented before the trial Court as Ex.P.24 in which it is opined that both samples contained contraband Ganja.

**3.** Learned counsel for the appellant would submit that Section 55 of the Act, 1985 is not complied with and the independent witnesses of seizure have not supported the case of the prosecution, therefore, conviction of the appellant under Section 20(b)(ii)(B) of the Act, 1985 is not sustainable. He would further submit that the trial Court while convicting

the appellant has not considered the relevant aspects of the matter and thereby committed illegality.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available on record.

6. True it is that as per statement of S.R. Netam (PW/4) there are some minor contradictions, but the fact remains that the articles seized from the possession of the appellant and same was sealed by this witness. This witness has taken charge of the said article and it was given to Incharge of Malkhana. True it is that PW/2 Anand and PW/3 Santosh have not supported the factum of seizure but they admitted their signatures in the document of seizure. Either they were present at the time of seizure or they were absent at the time of seizure. If they were absent, they are not real witnesses and if they are present and tried to suppress the fact from the trial Court, their version is not reliable. True it is that the case of the prosecution is based on the statement of Sub Inspector S.R. Netam (PW/4) but the statement of any Police Officer

cannot be discarded merely because he is an employee of the Police Department.

8. From the statement of Sub inspector S.R. Netam (PW/4) and other corroborating piece of evidence regarding examination of the seized articles, it is established that the appellant was in possession of contraband Ganja weighing 4.500 grams, therefore, the act of the appellant falls within the mischief of Section 20(b)(ii)(B) of the Act, 1985 for which the trial Court convicted him and this Court has no reason to disturb the finding of conviction recorded by the trial Court. Conviction under Section 20(b)(ii)(B) of the Act, 1985 awarded by the trial Court is hereby affirmed.

9. Heard on the point of sentence.

From the record, it appears that during the course of trial, the appellant suffered jail sentence from 22-12-2000 to 29-6-2001 and after conviction he suffered jail sentence from 29-6-2001 to 6-11-2001 which comes out nearly 11 months.

10. Considering all the facts and circumstances of the case, I am of the view that it would not be proper to send the appellant to jail again and ends of justice would be served if the appellant is sentenced to the period already undergone by him. Now, the appellant is sentenced to the period already undergone by him while maintaining conviction under Section

20(b)(ii) (B) of the Act, 1985. The fine amount shall remain intact.

13. Accordingly, the appeal is partly allowed to the extent indicated above.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**Judge**

Raju