

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.894 of 2001**

Smt. Sarita Sahu, W/o. Dharampal Sahu, aged 28 years, R/o. Village Bilodi, Thana Pulgaon, Distt. Durg. At present residing at Behind Bus Stand, Polsaipara, Durg.

---- Appellant**Versus**

The State of Chhattisgarh, through Distt. Magistrate, Durg Distt. Durg, Chhattisgarh.

---- Respondent

For Appellant	: Smt. Indira Tripathi, Advocate.
For Respondent/State	: Shri Rajendra Tripathi, Panel Lawyer

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****04.5.2018**

This appeal has been preferred against the judgment of conviction and order of sentence dated 12.9.2001 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Durg (CG) in Special Case No. 06/2001, wherein the trial Court convicted the appellant under Section 20(b)(ii)B of the Act and sentenced her to undergo imprisonment for one year and to pay fine of Rs.2000/- with default stipulations.

2. As per the prosecution case, Incharge of Police Station Dhamdha namely SP Tiwari received information that the appellant is coming by one bus Naveen Transport with contraband article ganja. On the basis of said information, one memo was

prepared by the said Officer and information was sent to higher authorities. The Officer reached to the spot and found the appellant carrying a bag in her hand moving from the said place after alighting from the bus. The bag was seized and upon search on the said bag ganja like material was seized. The article was subjected to weight and it was found to be 2 kg. Samples of 50-50 grams were separated and balance material was sealed separately, samples were sealed in another packet. Thereafter seized articles were deposited in the malkhana of the police station and samples were sent for chemical examination to Forensic Science Laboratory and as per the report of the FSL, the article was found to be ganja. After getting positive test report from the FSL, charge sheet was filed before the Court and the Court framed charges under Section 20b(ii)B of the Act against the appellant for which she did not plead guilty. The trial was conducted, statement of the prosecution witnesses were recorded and the statement of the accused/appellant under Section 313 CrPC was recorded. After completion of trial, the Special Judge after considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

i) Seizure witnesses and the witness who measured the ganja have not supported the version of the prosecution, therefore, case of the prosecution is doubtful.

ii) Mandatory provisions of the Act has not been complied with and there is no evidence regarding sending of information to higher authorities by telephone, therefore, version of the prosecution is not reliable.

iii) Even the statements of Police Officers namely SP Tiwari (PW-5) and RP Sahu (PW-6) are shaky in nature and no conviction can be made on the basis of their statements.

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

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

6. To substantiate the charge prosecution has examined as many as 6 witnesses. The appellant did not examine any witness in her defence.

7. Ex-P/2 is the memo of measurement of contraband article, Ex-P/3 is memo of seizure, Ex-P/4 is notice given to all the witnesses, Ex-P/5 is a document by which information was recorded, Ex-P/6 is the document by which notice was served to the appellant for making search on her, Ex-P/7 is the document for searching police officers and witnesses present on the spot, Ex-P/8 is the document by which search of bag was conducted, Ex-P/9 is the document for identification of the contraband article ganja, Ex-P/10 is the document by which information regarding

the appellant is recorded, Ex-P/12 is the report of chemical examination.

8. Sub Inspector SP Tiwari (PW-5) and Asst. Sub Inspector RP Sahu (PW-6) were the officers who conducted search and other formalities as per the command of the Act. RP Sahu (PW-6) deposed that he received information regarding the appellant thereafter he sent the information to higher authorities i.e. SDO(P), Berla and thereafter they reached to the spot, stopped the appellant and conducted search on the bag kept by her and after search they recovered contraband article ganja. Version of this witness is supported by the version of Sub Inspector SP Tiwari (PW-5).

9. True it is that the seizure witnesses namely Ferharam (PW-1) and Sanjay Kumar Shrivastava (PW-4) have not supported the factum of seizure but the point is whether the evidence of both the police officers can be discarded on the ground that seizure witnesses, who measured the ganja, have not supported the version of the prosecution. It is settled law that the evidence of Police Officers cannot be undermined only because they were the police officers, who investigated the matter. It is not a case where any individual is aggrieved by the act of the appellant or any individual has lodged FIR, but it is an offence against the society for which the police officers have initiated proceedings, thereby they are the material witnesses of the case and therefore, their version cannot be discarded only on the ground that other witnesses have not supported their version. If the seizure

witnesses were not present on the spot they are not real witnesses and if they were present on the spot suppressing the factum of seizure to the Court their version is not reliable. Therefore, version of the Police Officers has to be evaluated on the basis of documents submitted before the trial Court.

10. From the documents submitted before the trial Court, it is established that the appellant had kept one bag in her possession, same was seized on the spot and the material present in the bag was measured and was found to be 2kg ganja. From the version of Sub Inspector SP Tiwari, it is established that the said articles were kept in safe custody in Malkhana and thereafter samples were sent for chemical examination. As per the report (Ex-P/12) one Police Constable Vishram Singh deposited the articles in the Laboratory and the test was found to be positive on ganja. As per the definition of Ganja mentioned under Section 2(iii)(b), the flowering or fruiting tops of the cannabis plants are ganja. In the present case, as per the report of FSL, flowers were sent for examination, same were tested there and as per the report of the laboratory the contraband found in the possession of the appellant was ganja.

11. On overall assessment of the evidence, it is established that the appellant was in possession of the contraband article ganja measuring 2 Kg which is an offence punishable under Section 20b(ii)B of the Act for which the trial Court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

12. The appellant has suffered jail sentence from 01.02.2001 to 12.9.2001, i.e. 8 months and 12 days and thereafter she suffered jail sentence from 12.9.2001 to 30.10.2001 i.e. one month 18 days thereby her total jail sentence comes to 10 months. Considering the facts and circumstances of the case, the jail sentence suffered by the appellant is sufficient for the said offence. Therefore, her sentence is reduced to the period already undergone by her. Fine amount shall remain intact.

13. With the above modification, the appeal is allowed in part.

SD/-
(Ram Prasanna Sharma)
JUDGE