

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 661 OF 2001

Nasir Khan, aged about 50 years, S/o Peer Khan, aged about 50 years,
R/o Village- Chainganj, Police Station- Gunderdehi, Tahsil- Gunderdehi,
District Durg (C.G.)

... Appellant

versus

State of Chhattisgarh, through Police Station (Outpost)- Narayanpur,
District Jagdalpur (C.G.)

... Respondent

For Appellant	:	Ms. Smriti Shrivastava, Advocate.
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

21/04/2018

1. The present is an appeal preferred by the Appellant assailing the judgment of conviction and sentence dated 18.6.2001 passed by the Special Judge, N.D.P.S. Act, Bastar, at Jagdalpur, in Special Case No. 63 of 1999.
2. Vide the impugned judgment, the learned Court below has convicted the Appellant for the offence punishable under Section 20(B)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the N.D.P.S. Act') and sentenced him to undergo R.I. for 2 years with fine of Rs.3000/- and in case of default of payment of fine amount, he was further ordered to undergo additional R.I. for 4 months.
3. Allegation against the Appellant as per the prosecution is that the Appellant on the date of accident, i.e., on 5.8.1999, is said to have found in possession of 3kg of Ganja in a suit case that he was carrying. According to the prosecution, after the police party received a secret information a team was constituted and after completing the formalities as is required under the N.D.P.S. Act a search was conducted and in the course of the search, the Appellant was found to be in possession of Ganja stored inside

the suitcase that he was carrying. Thereafter, in compliance of mandatory statutory provisions under the N.D.P.S. Act, a case was filed against the Appellant.

4. During trial, the prosecution examined as many as 4 witnesses and there was no witness examined in defence.

5. After conclusion of the trial, the learned Court below, vide the impugned judgment, convicted the appellant for the offence punishable under Section 20(B)(i) of the N.D.P.S. Act and ordered him to undergo the sentence as mentioned in the second paragraph of this judgment.

6. It is this judgement of conviction and sentence which has been assailed by the Appellant in the present appeal.

7. Contention of the learned Counsel appearing for the Appellant is that from the perusal of the proceedings itself it would reveal that the prosecution has not been able to establish the fact that the monetary requirement under the provisions of the N.D.P.S. Act was not fulfilled in the present case and therefore the entire prosecution case stands vitiated and the conviction hence deserves to be set aside. It was also the contention of the learned Counsel for the Appellant that the case of the prosecution does not seem to have been established as it is not supported with any evidence from independent witnesses, instead the two seizure witnesses examined have turned hostile and have not supported the case of the prosecution. It was further contended that the requirement under Section 42 as well as Section 50 of the N.D.P.S. Act does not seem to have been complied with and therefore the judgment of conviction and sentence is liable to be set aside and the Appellant be acquitted of the charges.

8. Learned Counsel for the State on the contrary submitted that the statement of the prosecution witnesses particularly PW-3 S.L. Sinha and PW-4 B.S. Netam fully establishes the case of the prosecution and that

there is also sufficient evidence in the statement of these two witnesses, which proves that mandatory requirement under Section 42 and Section 50 of the N.D.P.S. Act and the other provisions of the said Act have been duly complied with and thus prayed for the rejection of the appeal.

9. Having heard the contentions put forth on either side and on perusal of record what clearly reflects is that PW-1 Mohd. Iqbal Khan and PW-2 A. Shyam, the two seizure witnesses, have turned hostile and have not supported the case of the prosecution in its entirety. However, in the cross-examination of these witnesses they have clearly admitted of having signed the panchanama prepared at the time of seizure proceeding and they have acknowledged their signature available at the seizure panchanama. This acceptance on the part of PW-1 and PW-2 of their signatures in the seizure panchnama gives sufficient strength to the statement recorded on behalf of the prosecution. Moreover, the case of the prosecution further stands fully proved from the statement of the Investigating Officer S.L. Sinha (PW-3). The said witness has in very categorical terms stated the procedure to have been complied by the search team consisting of police personnels, which establishes the compliances that are required under the provisions of the N.D.P.S. Act, particularly pre-search and the post-search formalities including the intimation and permission which are required to be sought from the higher authorities so also providing of opportunity to the Appellant to get himself searched in the presence of a Magistrate in case he has doubt so far as search team is concerned. So far as the statement of PW-3 is concerned it also reflects that he was also granted an opportunity of searching the police personnels in the search party before they could have searched the Appellant.

10. Given the statement of PW-3 S.L. Sinha which further stands corroborated from the statement of PW-4 B.S. Netam, the Sub Inspector, who had accompanied PW-3 at the time of the search, this Court has no hesitation in reaching to the conclusion that the case of the prosecution stands fully established and this Court does not find any illegality committed by the Court below while holding the Appellant guilty of committing the offence under Section 20(B)(i) of the N.D.P.S. Act. This Court thus does not find any material calling for an interference with the impugned judgment.

11. The appeal thus being devoid of merits fails and the same deserves to be and is accordingly dismissed.

12. Perusal of record shows that the Appellant has since been released from jail on his completing the entire jail sentence. Hence, no steps are required to be taken in this matter.

Sd/-
(P. Sam Koshy)
Judge