

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.501 of 2008**

Thullu @ Thullu S/o. Damu Patel, aged about 22 years,
Occupation Labour, R/o. Village Panarguda, PS Amdra,
Distt. Nawragpur (Orissa)

---- Appellant**Versus**

State Of Chhattisgarh, Through District Magistrate Dhamtari
(CG)

---- Respondent

For the appellant :Shri Amiyakant Tiwari, Advocate
For the respondent/State: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****12.12.2018.**

1. Shri VK Pandey, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Amiyakant Tiwari, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.
2. This appeal is directed against the judgment dated 07.4.2008 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Dhamtari (CG) in Special Criminal Case No.40/2007 wherein the said Court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of the NDPS Act and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 70,000/- with default stipulations.

3. As per the case of the prosecution, on 22.6.2007 Sub Inspector Pradeep Sori (PW-10) received telephonic information from Asst. Sub Inspector Chetan Sahu (PW-8) that he got the information from the informer that three persons were trying to sell cannabis/ganja in the bus station of Dhamtari. The officer recorded the same and one panchnama was prepared for search without warrant and a copy of the same was sent to Sub Divisional Officer (Police). Two independent witnesses namely Bheem and Kanhaiya were called and the said officer rushed to the spot with two independent witnesses and police personals. After reaching to the spot, he informed the appellant about his right to be searched by any gazetted officer or Magistrate, but he opted to be searched by the said police officer. First of all the police party given their search but nothing objectionable was found. When the bag in possession of the appellant was searched, ganja was found in the said bag. After weighing it was found to be 12.700 kg. Two samples of 50 gms each were prepared from the said ganja and it was sealed and packed. After the investigation, the appellant was cahрге sheeted and convicted as mentioned above.

4. The appeal has been preferred on the following grounds.

(i) The material seized in the present case was not found in the exclusive possession of the appellant, it was lying on the open land at the bus stand, therefore, the appellant is not liable for any criminal act.

(ii) Independent witness Kanhaiyalal (PW-11) has not supported the version of the prosecution therefore, evidence of other witnesses are not reliable.

(iii) Mandatory provisions of Sections 42, 50 & 57 of the NDPS Act were not complied with, therefore, finding arrived at by the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the record of the Court below.

7. Pradeep Sori (PW-10) who is Sub Inspector of Police deposed before the trial Court that he received the information from Asst. Sub Inspector Chetan that three persons are searching customers to sell ganja. This information was recorded in the panchnama and one panchnama for search without warrant is prepared. Two independent witnesses were called and thereafter they rushed to the spot. As per the version of this witness search notice to the appellant was given that he may be searched by a gazetted officer of Magistrate but he opted to be searched by the police officer and thereafter bag of the appellant was searched in which ganja was found. The same was weighed to be 12.700 kg. Two samples of 50 gm each were separately packed and sealed and it was handed over to incharge of the Police Station namely

Moharir Lakhanlal Suryawanshi who acknowledged the same as per Ex-P/1. He further deposed that information regarding search and seizure was sent to Sub Divisional Officer (Police) Dhamtari as per Ex-P/3. Again the information was sent to Special Judge, Dhamtari as per Ex-P/4. Version of this witness is supported by the version of ASI Chetan Singh Sahu (PW-7). As per the version of this witness, information received from mukhber was sent to SDO (P) and the same is recorded in the rojnamchasanha (Ex-P/11). Version of Pradeep Sori (PW-10) is again supported by the version of Ramesh Kumar Sahu (PW-8) regarding search. Again it is supported by the version of Kanhaiyalal (PW-11) an independent witness who has stated that ganja was found in possession of the appellant.

8. Lakhanlal Suryawanshi (PW-9) who was incharge of the malkhana deposed that he received the seized article in the police station and kept the same in safe custody and samples were sent to Forensic Science Laboratory for examination through constable Neel Kamal Tripathi. Report of the laboratory was received as per Ex-P/36 in which test of the ganja was found positive. Version of this witness is supported by the version of Constable Sohanlal Dhruw (PW-1), Constable Dilharan Singh Thakur (PW-2) & Constable Rajesh Kerketta (PW-3). All these witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

9. As per Section 42(2) of the NDPS Act, information should be sent to the superior officer within 72 hours and in the present

case the information was sent on the same day, therefore, Section 42 of the Act is complied. Again notice under Section 50 of the Act was provided to the appellant before his search, therefore compliance of Section 50 of the Act is also done. Seized property was kept in the safe custody of the Malkaha which was in compliance of Section 55 of the Act and information regarding search and seizure was sent to the superior officer under Section 57 of the Act. As all the provisions have been complied with the arguments advanced on behalf of the appellant that provisions of the Act are flouted is not established. Again no witness has rebutted the version of the police officer that contraband article ganja was seized from the possession of the appellant. Therefore, seizure from the appellant is also established. Arguments advanced on behalf of the appellant is not sustainable.

10. Quantity of ganja seized is 12.700 kg which is neither small quantity nor commercial quantity, therefore, the case of the appellant falls within the ambit of mischief under Section 20(b)(ii) (B) of the Act for which the trial Court has convicted and sentenced the appellant as mentioned above and this Court has no reason to record a contrary finding. The trial Court has awarded the sentence of seven years and fine of Rs.70,000/- which cannot be termed as harsh or disproportionate or unreasonable. Therefore, sentence part is also not liable to be interfered with. As per the report, the appellant has been released from jail after serving the full jail sentence awarded to him and

after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

11. Accordingly, the appeal is dismissed.

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

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