

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 197 of 2009**

Hanuman Charan Tiwari S/o Shri Ram Ratan Tiwari, aged 25 years, resident of Amadand Police Station Rajnagar, Tahsil Kotma, District Anup Pur (MP)

---- Appellant**Versus**

State Of Chhattisgarh Through The District Magistrate, Bilaspur (CG)

---- Respondent

For Appellant : Shri Ritesh Verma, Advocate

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****13.11.2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 2.2.2009, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act')/Additional Sessions Judge, Bilaspur (CG) in Special Case No. 19/2007, wherein the said Court has convicted the appellant under Section 20(b)(ii) (C) of the said Act and sentenced to undergo R.I. for 10 years and fine of Rs.1,00,000/- with default stipulation.

2. On 14.7.2007, Station House Officer of Police Station, Masturi received information to the effect that one person is selling illegal

contraband article Ganja. This information was recorded into Rojnamcha Sanha and witnesses were called and intimation was sent through Constable to the concerned Superintendent of Police and Deputy Superintendent of Police. Thereafter, the Investigating Officer rushed to the spot with Police personnels and independent witnesses and seized Ganja from the possession of the appellant. After weighing the Ganja, it was found 35 kg. Two samples of 25 gm each were separated from the seized article and it was sealed and the seized article was deposited in safe custody of Malkhana of said Police Station. The matter was investigated and the appellant was charge sheeted and after completion of trial the appellant was convicted and sentenced as above.

3. To substantiate the charge prosecution has examined as many as 8 witnesses.

4. Learned counsel for the appellant submits as under :

(i) There is non-compliance of mandatory provisions of Section 42, 50, 55 and 57 of the NDPS Act, but the trial Court has overlooked the same contrary to law;

(ii) Statements of witnesses are contradictory in nature which creates doubt on procedure of seizure and taking of sample, therefore, finding arrived at by the trial Court is not correct;

(iii) Sending of information to the higher authorities is not established by the evidence of Police Officer which creates doubt on prosecution case;

(iv) No spot map is filed before the trial Court, therefore, it cannot be ascertained as to where the contraband article was seized and the appellant is liable to be acquitted.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.

6. Constable, Smt. Sadhana Singh (PW7) received information regarding possession of contraband article Ganja by one Kumari Sudama Rani and she reduced the same information into writing in Rajnamcha Sanha. Thereafter, she sent the information to higher authorities and rushed to the spot with police personnels and independent witnesses. On spot she provided opportunity to the appellant to be searched by a gazetted officer or Magistrate, but he consented to be searched by this Police Officer, thereafter, on search of his house, 3 plastic bags were seized which were weighed and it was found to be 35 kg. Two samples of 25 gm each were separated from the said article and it was kept in safe custody of Malkhana by handing over the same to Constable Valmik Singh (PW5). Valmik Singh (PW5) supported the version of Smt. Sadhana Singh (PW7) regarding safe custody of the seized article in

Malkhana. This witness was Incharge of the Malkhana and he recorded the entry of the seized article in the Register of said Malkhana. Sukhdev Dahariya (PW3) is a person who collected the sample for examination in Central Forensic Science Laboratory and deposited there on 18.7.2007 and received acknowledgement of depositing the said article. The report was received as per Ex. P33 in which test of Ganja was found positive.

7. True it is that there is some minor contradictions in the statements of the witnesses, but the fact remains that the contradictions are not going to the root of the case. Seizure and keeping the Ganja in the Malkhana as per Section 55 of the NDPS Act is also established by the Incharge of Malkhana. Sending of information to the higher authorities is also established by the evidence of prosecution witnesses which is supported by Rojnamcha Sanha and other documents.

8. Looking to the entire evidence it is clear that the provisions of Section 42, 50, 55 and 57 of the NDPS Act have been complied with and there is no flaw in investigation. The trial Court has elaborately discussed the entire evidence and came to conclusion that possession of contraband article Ganja to the tune of 35 kg from the appellant was established and this Court has no reason to record a contrary finding. 20 kg Ganja is a commercial quantity as per Schedule, therefore, the mischief committed by the appellant falls under Section 20 (b) (ii) (C) of the NDPS Act for which the trial Court

has convicted and sentenced the appellant and same is hereby affirmed.

Heard on the point of sentence.

9. The trial Court has awarded minimum sentence to the appellant and less than minimum cannot be awarded. The sentence part is also not liable to be interfered with.

10. For the foregoing reasons, the appeal is liable to be and is hereby dismissed.

11. It is reported that the appellant has suffered the full term of his jail sentence and has been released from jail.

12. In view of the above, no order for arrest of the appellant is required.

Sd/

(Ram Prasanna Sharma)

JUDGE