

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 206 of 2009**

Dilip Sao S/o Jagdish Sao, aged about 30 years, Occupation,
Kirana Dukan, R/o Near Church, Shivaji Nagar, Khursipar,
Police Station, Khursipar, District Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through The Police Station- Khursipar,
District Durg (CG)

---- Respondent

For Appellant : Shri Malay Kumar Bhaduri, Advocate

For State/ Respondent : Shri Vivek Sharma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****12.11.2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 18.2.2009, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Durg (CG) in NDPS Special Case No. 08/2008, wherein the said Court has convicted the appellant under Section 20(b)(ii) B of the said Act and sentenced to undergo R.I. for 9 months and fine of Rs.2000/- with default stipulation for having illegal possession of contraband article Ganja measuring 2 kg and 100 gm.

2. Police Inspector, R.S. Dwivedi (PW6) was In-charge of Police Station Khursipar on 31.1.2008. He received information regarding possession of contraband article Ganja by the appellant. This information was recorded in Rojnamcha Sanha. Thereafter, 2 independent witnesses were called and the said officer rushed to the spot with police personnel and independent witnesses. The information was sent to the City Superintendent of Police as per Ex. P/13. On search of house of the appellant, contraband article Ganja was found. Two samples of 25 gm each were prepared and sealed. The seized articles were handed over to the Malkhana In-charge for safe custody and samples were sent to Central Forensic Science Laboratory for examination. The test of Ganja was found positive. After completion of legal formalities, the appellant was charge-sheeted and convicted and sentenced as mentioned above.

3. To substantiate the charge prosecution has examined as many as 6 witnesses.

4. True it is that Gulli Ram Sahu (PW1), Dekaram (PW2) and Rameshwar Yadav (PW3) have not supported the version of prosecution but the fact remains that if these witnesses were not present at the time of preparing seizure memo, they are not the real witnesses. Contrary, if they were present during investigation and suppressing the fact before the Court, they are not reliable witnesses. Therefore, the evidence of these witnesses is insignificant in deciding the issues before the trial Court.

5. Sub-Inspector, S.R. Dhurve (PW4) was the In-charge of Police Station and as per version of this witness, seized articles were kept in safe custody of Malkhana in sealed condition and same were sent to the Laboratory for examination. Motiram Sahu (PW5) was Head Constable, who submitted information to the City Superintendent of Police and as per version of this witness provisions of Section 42 (2) and Section 57 of the NDPS Act are complied with.

6. Though there are infirmities in the statements of some independent witnesses as pointed out by learned counsel for the defence, but same is not sufficient to discard the entire evidence. It is not a case where mandatory provisions have been flouted by the authorities, therefore, the trial Court is right in holding that the appellant was in possession of 2 kg and 100 gm of Ganja on the date of seizure which falls within the mischief of Section 20 (b) (ii) B of the NDPS Act and the conviction awarded by the trial Court is hereby affirmed.

Heard on the point of sentence.

7. The appellant had already suffered the jail sentence for more than 2 months during trial and after conviction he suffered the jail sentence of 1 month. In all, he has suffered the jail sentence for more than 3 months. In the view of this Court, the period already undergone by the appellant would be sufficient for the above

offence, therefore, he is sentenced to the period already under by him. However, the fine amount shall remain intact.

8. With the above modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)

JUDGE

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