

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 498 of 2012

Ramnath Nag, S/o. Mangal Ram Nag, R/o. Bodhghat Colony, Jagdalpur,
Distt. Bastar (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through - District Magistrate, Jagdalpur, Distt. Bastar
(C.G.).

-----Respondent

For Appellant	: Mr. Keshav Dewangan and Mr. Vikash Shrivastava, Advocates
For Respondent/State	: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

03/05/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Special Judge (N.D.P.S. Act), Bastar at Jagdalpur in Special Case No.13/2009 on 17.04.2012 convicting the appellant for the offence under Section 20 (B) (2-C) of N.D.P.S. Act and sentenced him to under go R.I. for 10 years along with fine of Rs.1,00,000/- and in default of payment of fine, the appellant is required to further under go R.I. for 1 year separately.

2. Facts of the case in brief is this that on 25.03.2009, A.S.I., S.R. Prajapati along with his team was on patrolling duty and on the basis of the telephonic information received by him he proceeded to find a vehicle, which had met with an accident. On the spot, the vehicle bearing registration No.C.G.-04-HB-0715 was found in damaged and abandoned condition and on search made, it was found that the vehicle was containing 9 jute bags containing the contraband Ganja. Procedure of search and seizure was conducted following the provisions of N.D.P.S. Act. On weighment, total weight of contraband was found to be 212.350 kg. Seizure was made accordingly after preparation of samples, FIR Ex.P-20 was lodged. Samples were sent for FSL examination and FSL report Ex.P-25, confirmed that the contents of the samples were Ganja, the narcotics substance. After completion of investigation, charge-sheet has been filed before the concerned trial Court.
3. Appellant was charged with offence under Section 20 (b) (2-C) of N.D.P.S. Act, 1985. The appellant denied the charges and prayed for trial. The prosecution examined as many as 10 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. Two witnesses were examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment

of conviction without there being any basis of reliable and cogent evidence in support of the charge. Firstly, the seizure of articles Ganja had been made from an abandoned vehicle without following the procedure provided under N.D.P.S. Act. Section 42, 55 and 57 of N.D.P.S. Act have not been complied with in any respect. Secondly, the only piece of evidence i.e. available against this appellant is the statement of the witness Harkesh Bahadur Singh (P.W.-7.), who has stated that he had engaged this appellant as driver of the vehicle of which he was owner. That witness himself was not present in the spot and the story he has stated is totally hearsay, which can not be made the basis for conviction against this appellant. Hence, the conviction of the appellant recorded by the trial Court is bad in law, hence, it is prayed that the appellant be acquitted of the charges.

5. Counsel for the State opposes the grounds in appeal and the submissions made in this respect. It is submitted that the Investigating Officer has complied with the provisions of Section 42, 55 and 57 of the N.D.P.S. Act. Statement given by Harkesh Bahadur Singh (P.W.-7) is very clear and cogent against the appellant to establish that the appellant was in possession of the contraband at the time, when the contraband was abandoned by the appellant in the vehicle in his possession and his statement has been supported by S.R. Prajapati, A.S.I. (P.W.-6), hence, the prosecution has proved its case beyond all reasonable doubts and there is no room for interference in the impugned judgment of conviction and order of sentence.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. Point for consideration in this appeal is whether the prosecution has successfully proved the case beyond reasonable doubt that the contraband was seized from the possession of this appellant ? The answer to this question shall be determine the fate of this appeal.
8. It is not disputed that 212.350 Kg. contraband Ganja was seized from the spot from a vehicle bearing registration No.C.G.-04-HB-0715, which was found in abandoned condition and nobody was found nearby and there is no witness, who states that the appellant was seen traveling the vehicle or was present nearby, when the vehicle was abandoned.
9. Harkesh Bahadur Singh (P.W.-7) has given statement that he had engaged the appellant as driver and he had assigned the appellant with work of one Deepak Singh Thakur, who had to travel somewhere on 25.03.2009 and according to him the appellant had taken the vehicle on that date for the work assigned. He had stated that in the evening, he tried to contact the driver on phone. On the next day, he came to know from the newspaper about his vehicle being caught by the police for transporting the contraband. He had stated that on enquiry, the appellant narrated to him, that he had given lift to one of his acquaintance namely Sarvesh Shrivastava and on his request, he was taking him on his vehicle to Kanker along with his luggage. While driving, the vehicle met with an accident and the police started following them because of which he had to leave the

vehicle in abandoned condition and had to escape from the spot. It is also stated that at the time, when he was abandoning the vehicle, he was told by Sarvesh that luggage contains Ganja because of which, he became frightened and fled from spot. In the cross-examination his statement has remained un-rebutted.

10. The first thing is this that the appellant has not witnessed on the spot by this witness. His statement is based totally on the narration given by the appellant. Secondly, according to the statement given, when the vehicle was being abandoned, the appellant was informed that luggage contained Ganja has also some relevance to show that at the time when the appellant had given lift to Sarvesh and was traveling with his luggage to Kanker, the appellant was not conscious to this fact that luggage being transported was Ganja, the narcotics substance.
11. The word possession has specific meaning. If the statement of Harkesh Bahadur Singh (P.W.-7) is to be believed, the appellant can not be regarded to be in possession of that luggage because according to the narration, appellant has simply given lift to one Sarvesh, hence, the luggage had belonged to that person named Sarvesh and the possession of that luggage would be attributed to that Sarvesh, who has been arrayed as co-accused in this case. Secondly, as it has been found that the appellant was not in conscious possession of Ganja at the time, when he gave lift to the co-accused Sarvesh, which has also been taken notice of. Only for the reasons that the appellant was employed as driver by Harkesh

Bahadur Singh (P.W.-7) does not connect the appellant in the aforesaid commission of crime.

12. The evidence i.e. present on record is not of such convincing nature so that it can be made the basis to give such finding that the appellant was the person, who was solely in actual possession of the contraband found in the abandoned vehicle. Hence, looking to the nature of the evidence that has been lead by the prosecution in this case, it is found that such evidence does not inspire confidence of this Court for this reason the conviction against the appellant that has been recorded by the trial Court appears to be erroneous and without the basis of evidence beyond reasonable doubt. Hence, for these reasons, I am of this opinion that this appeal deserves to be allowed and it is hereby allowed. The appellant is acquitted of the charges. The appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge