

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment reserved on 7-9-2018

Judgment delivered on 12-10-2018

**CRA No. 214 of 2012**

- Santosh Singh S/o Ajay Singh aged about 24 years, R/o Housing Board Colony Jagdalpur , P.S. Bodhghat , Distt. Bastar C.G .

---- Appellant

**Versus**

- State of Chhattisgarh Through - P.S. Bhanpuri , Distt. Baster C.G.

---- Respondent

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| For Appellant        | : | Mrs. Renu Kochar and Mr. Devashish Vishwas, Advocates |
| For respondent/State | : | Mr. Ramakant Pandey, P.L.                             |

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**Hon'ble Shri Justice Ram Prasanna Sharma****CAV Judgment**

This appeal is preferred against the judgment of conviction and order of sentence dated 31-1-2012 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Bastar at Jagdalpur in Special Case No. 26 of 2009, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per prosecution case, on 2-7-2009 Assistant Sub Inspector of Police Station Bhanpuri received an information that the appellant along with other co-accused has illegally stored Ganja in the vehicle bearing registration No. CG-17-ZD-0158 and was taking towards Jagdalpur. Information was recorded and after legal formalities the said Police Officer rushed to the spot with other witnesses and 2.25 quintals of Ganja was recovered from the said vehicle. The matter was investigated and after investigation the appellant was charge-sheeted. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) Mandatory provisions of Sections 42, 50 and 57 of the Act, 1985 have not been complied by the prosecution, therefore, the entire proceedings are vitiated.
- ii If the appellant was sitting in the alleged vehicle, the question of breaking locks would be unnatural and the evidence against the present appellant is unreliable.
- iii) The said vehicle was not registered in the name of the appellant, therefore, connecting piece of evidence is lacking.

- iv) Only two sample packets were prepared whereas nine packets were seized, therefore, sample is not representative sample and finding of the trial Court is not liable to be sustained.
- v) There are major contradictions and omissions in the statements of the prosecution witnesses, therefore, benefit of doubt should be given to the appellant.

He placed reliance on the decisions of Hon\ble Supreme Court in the matters of **Shahejad Khan Mahebubkhan Pathan vs. State of Gujarat, reported in (2013) 1 SCC 570, Darshan Singh vs. State of Haryana, reported in (2016) 14 SCC 358 and Raju @ Salam Vs. State of Kerala, reported in 1999 SAR (Criminal) 359.**

**4.** On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

**5.** I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. To substantiate the charge, prosecution examined as many as nine witnesses. PW/9 G.P. Pandey is Sub Inspector of Police Station Bhanpuri. He deposed that on 2-7-2009 he was posted as Sub Inspector at Police Station Bhanpuri and on that day at about 16.00 pm he received information that two persons were transporting contraband article Ganja in a Tata Sumo vehicle bearing registration No. CG-17-ZD/0158. As per version of this witness, information was recorded in Rojnamcha Sanha (Ex.P/21) on the same day and thereafter he sent one Head Constable to summon two independent witnesses. He called two witnesses namely Shyamlal and Diaman and thereafter one panchnama was prepared regarding information as per Ex.P/16. He further deposed that he prepared panchnama showing inability to get search warrant as per Ex.P/17 which is mentioned in Rojnamcha Sanha (Ex.P/22). Information was sent to office of Sub Divisional Officer (Police) (para 3) and thereafter he moved to the spot with Assistant Sub Inspector Ramakant Tiwari, Head Constable Mahenda Singh Thakur and other Constable and witnesses Shyamlal and Diaman. This practice is also mentioned in Rojnamcha Sanha as per Ex.P/23. As per version of this witness, vehicle Tata Sumo bearing registration No. CG-17-ZD-0158 reached near Bhanpuri barrier and when they tried to stop the said vehicle, the driver

of the said vehicle did not stop the vehicle and driving the vehicle in high speed passed the barrier, the vehicle was driven by the present appellant and when they chased the said vehicle, both persons sitting in the vehicle stopped the vehicle near Markandi river and jumped into river. Out of two persons one succeeded to escape by swimming the river, but the appellant was caught over by the police authorities. After searching of the vehicle, Ganja like material was found in various packets. Nine plastic polythene packets were kept in a jute bag which was weighed by one physical balance and total of the quantity was found 2.25 quintals. All the nine packets were produced before the trial Court and the trial Court inspected all the nine packets during cross examination of this witness and as per report packets were containing contraband article Ganja to the tune of 32 kgs, 25 kgs, 30kgs, 30 kgs, 29 kgs, 32 kgs, 32 kgs, 8 kgs and 9 kgs. From the statement of this witness, it is established (para 8) that he mixed all the nine packets and then prepared two samples from mixed articles and each sample packet contained 25 grams of Ganja.

7. PW/6 Prafull Chandra Markam was posted as Head Constable (Moharrir) at Police Station Bhanpuri who produced Malkhana register of said Police Station and as per version of this witness, nine packets were deposited by the

Assistant Sub Inspector G..P. Pandey (PW/9) in the present case and two sample packets (A1 and A/2) were also deposited in the Malkhana. As per version of this witness, sample A/1 was handed over to Constable Deepak Kotlam No. 427 in a sealed packet and he submitted the same in Forensic Science Laboratory. PW/8 Deepak Kotlam has deposed that he received sample packet A/1 in a sealed condition and deposited the same in FSL on 6-7-2009 and deposited acknowledgment thereof in the Police Station. As per version of G.P. Pandey (PW/9), report of FSL was received vide Ex.P/31 in which test of Ganja was found positive.

8. It is contended on behalf of the appellant that provisions of Sections 42, 50 and 57 of the Act, 1985 have not been complied with. From the evidence of Assistant Sub Inspector G.P. Pandey (PW/9), it is established that he recorded the information as per Panchnama and same was sent to office of Sub Divisional Officer (Police). Version of this witness is supported by Constable Ram Singh Kashyap (PW/7) who deposited the said Panchnama in the office of office of Sub Divisional (Police). Again from the evidence of G.P. Pandey (PW/9), it is established (para 10) that the entire report was sent to Office of Sub Divisional Officer (Police) as per Ex.P/19 which is supported by the version of Constable

Ram Singh Kashyap PW/7 who deposited the report in the office of Sub Divisional Officer (Police). In this way, provisions of Sections 42, 50 and 57 of the Act, 1985 have been complied. Again, seized articles were kept in safe custody of Malkhana as per evidence adduced by the prosecution, therefore, provision of Section 55 of the Act, 1985 is also complied. It is a case where contraband article Ganja was seized from the vehicle and it is not a case of personal search. Section 50 of the Act, 1985 attracts only in case of personal search, but in the present case no personal search is conducted, therefore, it cannot be said that the provisions of Sections 42, 50 and 55 have not been complied. Argument on this count is not acceptable.

9. It is further contended on behalf of the appellant that article was seized from the vehicle, therefore, it is not a case of conscious possession. From the evidence it is established that the appellant was driving the vehicle and when it was stopped by the police officer, he did not stop the vehicle and accelerated the vehicle for moving of the screen. Again, when police reached to the vehicle he jumped into river and then got by the police authorities. Conduct of the appellant shows that he was in conscious possession of the contraband article.

10 It is further contented by counsel for the appellant that there is possibility of tamper. From the evidence of PW/9 G.P. Pandey, Assistant Sub Inspector, it is established that seized articles were sealed and same was kept in safe custody of Malkhana which is corroborated by Incharge of Malkhana. Again sealed sample was handed over to FSL and the laboratory has received the same in sealed condition, therefore, there is no scope for tampering with the seized article. It is presumed that official acts have been discharged in due regular course and unless it is rebutted, it cannot be held that there is scope of tampering.

11. In the cases related to seizure of contraband article, FIR is recorded after seizure. It is not a case where FIR is first registered and then the matter is investigated. The person who seizes the article records FIR and there is nothing in law to prevent him from recording FIR. As the matter is not investigated by the said Police Officer after registration of FIR, it cannot be said that there is possibility of false implication.

12. Learned counsel for the appellant would further submit that conviction cannot be based on the statement of the appellant under Section 313 of Cr.P.C. In the present case, conviction is not based on the statement of the appellant. It is based on direct and clinching evidence against the appellant

and all the witnesses adduced by the prosecution are firm in their version and therefore, it cannot be said that conviction is recorded on the basis of statement of the appellant. Contraband article Ganja was produced before the trial Court as mentioned in the statement of G.P. Pandey, Assistant Sub Inspector (PW/9), therefore, it is not a case where contraband article is not produced before the trial Court.

13. It is further contended on behalf of the appellant that sample is not a representative sample. Looking to the statement of G.P. Pandey, Assistant Sub Inspector (PW/9), argument advanced by the appellant is without substance. As per version of this witness, he has mixed all nine packets containing contraband article Ganja and then took sample, therefore, the sample which was sent to FSL is a representative sample of entire 2.25 quintals of Ganja and it is not a case that sample is taken from anyone of the packets.

14. Considering all the facts and material on record, this court is of the view that the case laws are clearly distinguishable from the entire facts and circumstances of the present case.

15 Commercial quantity of Ganja is 20 kgs. In the present case, the appellant was in possession of 2.25 quintals of

Ganja, therefore, the case of the appellant falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed. The trial Court awarded minimum sentence to the appellant for the said offence and less than minimum sentence cannot be awarded. Sentence part including fine amount is also not liable to be interfered.

16. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

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

Raju