

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 471 of 2010**

1. Prakash Kumar Bhoi S/o Ramuram @ Ram Kumar Bhoi Aged About 20 Years Occupation Driver, R/o Gopiyapara, Purani Basti, Raipur, District Raipur Chhattisgarh.
2. Shekh Ramjan S/o Shekh Dilawar Occup.Cycle Stand Keeper Caste Musalman, R/o Chuna Bhatti, Gudiyari, Dhabra, Raipur, Chhattisgarh.

---- Appellants**Versus**

State Of Chhattisgarh Through The District Magistrate, Jagdalpur,
District Bastar Chhattisgarh.

---- Respondent

For the Appellants	:	Ms. Neha Verma, Advocate.
For the Respondent/ State:		Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****12.02.2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 25.6.2010 passed by the Learned Sessions Judge (NDPS Act), District Bastar, Chhattisgarh in Special Criminal Case No. 28 of 2008, whereby and whereunder, the learned Sessions Judge has convicted the appellants under Section 20(b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act and sentenced them to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- each, in default of payment of fine, to further undergo additional RI for one year.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. The facts of the case, in brief, are that on 14.2.2008 at about 10:20 am, the police personnel of P.S. Farasgaon, District Bastar stopped the car bearing registration No. C.G. 04-B/9155 which was occupied by both the appellants. On search made by the police, total 90 kg of ganja (narcotic substance) was found and the same was seized from the said vehicle. After conducting the procedure of search and seizure in accordance with the provisions of NDPS Act, FIR was registered against both the appellants.

4. Statements of the witnesses were recorded and on completion of the investigation, the appellants were charged for the offence punishable under Section 20(b) (ii) (C) of the NDPS Act. The appellants pleaded innocence and denied the charges. On their denial of charges, the trial was conducted. The prosecution examined as many as 8 witnesses. The accused persons in their statement under Section 313 Cr.P.C. denied all the incriminating evidence against them and submitted that they have been falsely implicated in the case, but they have led no evidence in their defence. After giving opportunity of hearing and leading evidence to the prosecution and defence, the impugned judgment has been passed by the trial Court, by which the appellants have been convicted and sentenced as mentioned above. Hence, this appeal.

5. The grounds taken in the appeal by the appellants, are that the defence put-forth by the appellants was not considered by the trial Court. There are many contradictions, omissions and improvements in the statements of the prosecution witnesses, which affect the reliability of the prosecution evidence. Hence, the appellants urged that the conviction is bad in law.

6. Learned counsel for the appellants submits that the trial Court has passed an erroneous judgment convicting and sentencing both the appellants in this case. It is further submitted that the appellants are continuously under detention since the date of arrest i.e. 14.2.2008 and the substantive jail sentence awarded to them is likely to complete in few days. Hence, it is prayed that if this Court is not inclined to acquit the appellants in this case, then the huge fine amount imposed against the appellants may be reduced looking to the economic and social status of both the appellants who simply belong to the labour class and have no resources to pay the huge amount of fine.

7. On the other hand, Learned State counsel opposes the submissions made by counsel for the appellants and submits that the prosecution has proved its case beyond reasonable doubt and there is no scope for interference in the findings given by the trial Court.

8. On the basis of the grounds raised in the appeal and the submissions made, the only question before this Court is whether the case against the appellants is proved beyond reasonable doubt by the prosecution side and if

not then whether, the appellants are entitled to be acquitted of the charges against them.

9. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record.

10. On the date of incident, ASI – Satyadev Ram Prajapati (PW-4) was present on the barrier situated on highway in Farasgaon. At about 10:20 am, one Tata Sumo vehicle bearing registration No. C.G.04-B-9155 arrived and the signal was given to stop the vehicle, but the vehicle did not stop and tried to get away. Thereupon, the police party chased the vehicle and stopped the same near the stadium. It is stated that both the appellants were occupying the vehicle. In presence of two witnesses, the proceedings were initiated. It is stated that as there was no time available to obtain a search warrant, a panchanama Ex.P/2 was prepared and the copy of the same was immediately dispatched to the superior authority – SDO (Police), Kondagaon. It is further stated by Satyadev Ram Prajapati (PW-4) that a notice under Section 91 of the Cr.P.C. was given to the appellants to produce the documents regarding possession and transport of the articles in their presence and the appellants informed in return that they have no such documents vide Ex.P/20. It is further stated that thereafter notice was served upon the appellants under Section 50 of the NDPS Act stating that the appellants have the right to have a search made in presence of Gazetted Officer or a Magistrate at which both the appellants gave their consent to search the vehicle by the witness himself vide Ex. P/3. Subsequent to that, the police party present on the spot were searched by the appellants and no objectionable article was found in panchanama Ex. P/4. It is stated that on

search of the vehicle, 6 jute bags and one plastic bag were found. On opening, they found ganja (narcotic substance) inside the bags. A panchanama of the search was prepared vide Ex. P/5. Substance recovered in search was tested by smelling and burning which was confirmed by the witnesses that the substance was ganja of which the panchanama Ex. P/7 was prepared.

11. It is stated by ASI – Satyadev Ram Prajapati (PW-4) that Head-constable Nihar Ranjan Mandal (PW-3), on being instructed, brought a scale and weights. After verification of the scale vide Ex. P/8, the contents of the jute bags were taken out and homogenized of which a panchanama Ex. P/9 was prepared on the spot. On weighing all the bags, total 90 kg of ganja was found to be in possession of both the appellants. A panchanama of the procedure was drawn on the spot vide Ex. P/10. ASI – Satyadev Ram Prajapati (PW-4) further stated that 50 gm of ganja from each of the jute bags was taken out, in total 14 packets of samples were prepared by putting special identification mark on them. Panchanama preparation of samples are prepared vide Ex. P/11. A panchanama of seal used for preparation and for sealing the samples of the articles was prepared vide Ex. P/12. Some other seizures of the vehicle and articles were also made. The appellants were apprehended and formal arrest was made on the spot. FIR Ex. P/23 was recorded in police station Farasgaon. On completion of the whole procedure, a report vide Ex. P/5 was immediately dispatched to the office at Kondagaon. It is stated that the sample packets were sent for chemical examination to Raipur vide Ex. P/5 which was received by Ex. P/7 and the report of Forensic Laboratory in this regard is Ex. P/28, according to which, the contents of the samples were confirmed as narcotic substance (ganja).

12. ASI – Satyadev Ram Prajapati (PW-4) has remained firm on his statement in examination-in-chief and no such statement is there in his cross-examination to rebut or contradict the statement which was given by him earlier before the Court. Head-Constable – Mahesh Kunjam (PW-1), Nihar Ranjan Mandal (PW-3), Ramesh Kumar Nag (PW-5), Vikas Tiwari (PW-6) have given their statements in support of the statement given by ASI Satyadev Ram Prajapati (PW-4). Neither any specific defence has been raised by the appellants nor any evidence was led by them to rebut the case of the prosecution. Under these circumstances, no fault can be found with the finding arrived at by the trial Court in convicting both the appellants for the charges. Hence, the finding of conviction recorded by the trial Court needs no interference.

13. Considering the submissions made by the counsel for the appellants regarding reduction of fine amount imposed only and taking into consideration the fact that both the appellants have suffered almost the whole sentence of imprisonment awarded to them which indicates their financial status, I am of the considered view that the fine amount imposed upon both the appellants should be reduced by giving some relaxation to both the appellants.

14. On the basis of the aforesaid observations and the circumstances at length, this appeal is allowed in part. The impugned judgment of conviction and the sentence of imprisonment awarded to both the appellants is maintained and confirmed, however the fine sentence awarded against the appellants is hereby interfered with and the fine sentence awarded to both

the appellants is reduced from Rs.1,00,000/- each to Rs.10,000/- each and in default of payment of fine, the appellants shall undergo RI for two months.

15. Accordingly, the appeal is allowed in part.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi