

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 7-9-2018

Judgment delivered on 29-10-2018

CRA No. 397 of 2011

- Babulal Verma S/o Tijau Ram Verma Aged About 48 Years
Occupation Cycle Repairing Shop, R/o Village Dilapahri,
Thana Lalbag, District Rajnandgaon Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Darbha, District
Bastar Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Rakesh Kumar Thakur, Advocate
For respondent/State	:	Mr. Suryakant Mishra, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19-4-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Jagdalpur in Special Case No. 12 of 2009, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and 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 mid-night of 1-6-2009 one Marshal Jeep bearing registration No. CG 07/5999 was found in

forest area of Kamanar and upon searching of the vehicle, three bags of Ganja containing 15 packets were found and it was measured to 188 kgs. Upon 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) Present appellant could not be convicted only on the ground that he is a registered owner of the vehicle. The vehicle was in possession of the driver of the present appellant and therefore, criminal liability cannot be fastened on the appellant.
- ii The trial Court has not evaluated the evidence in its true perspective and came to wrong conclusion which is liable to be reversed.

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 ten witnesses. As per version of PW/8 S.P. Bhagat, Sub Inspector

of Police Station Darbha, he received information that one Marshal Jeep bearing registration No. CG 07 -5999 was stopped at Kamanar forest barrier and returned towards Darbha. He further deposed that it is informed by some one that contraband article ganja was kept in the said vehicle. He recorded said information in Rojnamcha Sanha (Ex.P/17). Information was sent to City Superintendent of Police Jagdalpur. Again two independent witnesses were called through Constable Umesh Kunjum and one panchnama was prepared for not getting search warrant. As per version of this witness, all the information was sent to City Superintendent of Police Jagdalpur and thereafter he rushed to the spot with police personnel and independent witnesses. When they reached near Kamanar canal valley, person sitting in the said Marshal vehicle fled away. Vehicle was searched and substance like Ganja was found in jute bag and plastic bag kept in the said vehicle. Total number of packets were 15 which were weighed and then quantity of said article was found 188 kgs and 600 grams. All the seized articles were mixed properly and thereafter 13 samples were prepared and each sample packet contained 25 grams of the said article which was marked as A1 and A2 to O1 and O2. Sample of seal kept by this officer was affixed in the sample of contraband article and after seizure of articles and the vehicle, the same were handed to Incharge of Malkhana who is Head Constable. As per version of his witness, all the proceedings were recorded and the same was sent to City Superintendent of Police, Jagdalpur. Version of this witness is supported by version of

Head Constable Kamlesh Kumar Nirmalkar to whom article was entrusted by Police Inspector S.P. Bhagat which was recorded in the register of Malkhana as per Ex.P/16. Constable Ramdas Sethiya (PW/3) and Head Constable Sukhal Singh Gowde (PW/6) have supported version of these witnesses. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence. From the evidence of PW/1 Dheeraj Gupta, it is established that the vehicle from which contraband article Ganja was seized, was sold to appellant for cash consideration of Rs.1,50,000/-. As per version of this witness vehicle was in possession of the appellant. Version of this witness is unrebutted during cross examination and therefore, it is established that the vehicle was in possession of the appellant at the time of incident. Though PW/2 Ramnath has not supported the version of Police Officer, but as per version of this witness, he did not accompany the Police Officer during search. If this witness was not present during search, he is not the real witness of the incident and if he was suppressing the fact of search even after participating in the same, his version is not reliable. Constable Tarjan Korram PW/9 is a person who received sample packet and submitted the same in FSL and deposited the acknowledgment receipt at Police Station. From the evidence of Malkhana Incharge, Head Constable Kamlesh Kumar Nirmalkar (PW/7), it is established that he had given the sample packet to Constable Tarjan Korram who deposited the same in FSL. From the evidence of both these witnesses, it is established

that the contraband article which was seized in the present case was kept in the safe custody of Malkhana after seizure and same was sent for chemical examination and as per report of FSL (Ex.P/29), test of Ganja was found positive.

7. Learned counsel for the appellant would submit that the case of the persecution is based on registration certificate of the vehicle which is not sufficient to bring home the guilt. In view of this Court, argument advanced on behalf of the appellant is not sustainable. As per version of PW/1 Dheeraj Gupta, vehicle was transferred to the present appellant in which contraband article Ganja was found and as per the statement of the appellant recorded under Section 313 of the Cr.P.C., he had given the said vehicle to one driver namely Ajay Kumar Verma, but said Ajay Kumar Verma has not been examined as defence witness. Therefore, it is not established that the vehicle was in possession of some other person namely Ajay Kumar Verma. Possession of the appellant of the said vehicle is proved by the evidence and the appellant has also admitted that he was in possession of the said vehicle, but he failed to discharge his burden that the vehicle was handed over to some other person. Therefore, the trial Court opined that possession of contraband article is proved against the present appellant and this court has no reason to record contrary finding. Argument advanced on behalf of the appellant is not sustainable.

8. Commercial quantity of Ganja is 20 kgs. In the present case, the appellant was in possession of 188 kgs and 600 grams 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.

9. Heard on the point of sentence.

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 with by this court.

10. 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