

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 707 of 2011**

- Heera Prasad Satpathi S/o Shankar Prasad Satpathi, R/o Chalanapadar, P.S.-Devbhog, Distt.-Raipur, C.G.

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Devbhog Dist. Raipur (CG).

---- Respondent

 For the appellant : Mr. Alok Nigam, Advocate.
 For the respondent/State : Mr. Ramakant Pandey, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****7-9-2018.**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11-8-2011 passed by the Special Judge (Narcotic Drugs & Psychotropic Substance Act, 1985 (for short, "the Act, 1985"), Raipur (CG) in Special Criminal Case No. 27 of 2010 wherein the said Court convicted the appellant for commission of offence under Section 20(b)(ii) (c) of the Act, 1985 for illegal possession of contraband Ganja measuring 43 kgs and sentenced him to undergo RI for ten years and fine of Rs.1,00,000/- with default stipulations.
2. As per prosecution case, (PW/7) Jaiveer Bhagat, Assistant Sub-Inspector of Police Station Mainpur received information

on 29-7-2010 at about 6.30 pm that one unknown person is in illegal possession of contraband Ganja in two jute bags and he is inclined to sell the same. Information was written and one Panchnama was prepared by the said officer. The information was sent to Additional Superintendent of Police, Gariyaband and again it was recorded in Rojnamchasanha of the said Police Station. After recording the information the police authorities along with other police personnel reached to the spot i.e., main square of Mainpur and they found that the appellant was having some contraband Ganja in two jute bags. Appellant was given notice regarding his right to be searched by any Magistrate or Gazetted Officer and he gave consent to be searched by the Asst. Sub Inspector. Two jute bags containing contraband article were seized from the appellant and thereafter on weight one bag was found to be 20 kgs and another bag was found to be 23 kgs. Samples from each bag were separated as A/1, A/2 and B/1 and B/2. After seizure, two packets of sample were sealed and rest of the articles were also sealed and same was kept in safe custody of Police Station. All the activities were recorded in Rojnamchasanha and information was sent to Additional Superintendent of Police, Gariyaband. After investigation, appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under.

(i) Mandatory provisions under Sections under Section 55 of the Act, 1985 have not been properly complied with which vitiated the prosecution case.

(ii) The trial Court has not evaluated the evidence in its true perspective and came to a wrong conclusion which is liable to be reversed.

4. *Per contra*, State counsel supporting the impugned judgment has submitted that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with by this Court.
5. I have heard counsel for the parties and perused the material on record.
6. To substantiate the charge, prosecution examined as many as 9 witnesses.
7. Section 55 of the Act, 1985 says that officer Incharge of Police Station shall take charge and keep in safe custody all seized articles seized under this Act after affixing his seal. From the evidence of PW/7 Jaiveer Bhagat, Asst. Sub Inspector, Police Station Mainpur and PW/4 Inspector Lakhanlal Markam, it is established that contraband articles were seized from the

appellant kept in two big jute bags. PW/6 Nitin Kumar Sachdev is a person who is having grocery shop and he weighed the seized articles and after weight found 20 kgs in one bag and 23 kgs in another bag, totaling 43 kgs. From the evidence of Asst. Sub Inspector Jaiveer Bhagat (PW/7) and PW/9 Ramesh Markam who is Inspector of Police Station Mainpur, sealed four packets were given to Constable Dinesh Sahu to deposit the same in Forensic Science Laboratory. As per report of FSL (Ex.P/28), said Dinesh Sahu deposited four packets of samples on 31-7-2010 in the said laboratory and after examination test of Ganja was found to be positive in all the four packets of the sample.

8. In the present case, from the statement of Jaiveer Bhagat (PW/7) and Inspector Ramesh Markam (PW/4), it is established that seized articles were kept in Police Station Mainpur and it was sealed. Report of FSL (Ex.P/28) confirms that specimen seal of Manpur S+1* was found in the packet. It means packets were sealed by the Police officer and same was intact upto depositing in FSL. Though depositing samples in Malkhana is not mentioned in the register of said Malkhana, but from the evidence of two police officers it is established that packets were sealed and same were sent from Police Station and it was found in sealed condition.

9. Looking to the over all evidence, it is established that seized articles were kept in safe custody of Police Station Mainpur and same was sent for examination, therefore, there is no possibility of tampering with the above said article.
10. Learned counsel for the appellant further submits that PW/3 Guman Singh Patel, who is witness of seizure has not supported the factum of seizure.
11. True it is that this witness has not supported the factum of seizure, but his version is not sufficient to discard the version of Assistant Sub Inspector Jaiveer Bhagat (PW/7) and one other seizure witness Ramesh Markam (PW/4). Both have specifically stated that the articles were seized from in two jute bags and their version is unshaken during cross examination. Looking to the entire evidence it cannot be held that there was no seizure from the appellant.
12. Looking to the entire evidence and circumstances of the case, it is established that contraband article measuring 43 kgs was seized from the appellant and samples were separated from each bag which was tested by FSL and test of Ganja was found positive. As per schedule of the Act, 1985, quantity more than 20 kgs of Ganja is commercial quantity and for possession of commercial quantity offence under Section 20(b) (ii)(c) of the Act, 1985 is made out for which the trial Court convicted the present appellant.

13. On overall assessment of the entire evidence and argument advanced on behalf of the appellant, this court is of the view that no mandatory provision was flouted during the course of investigation and argument on behalf of the appellant has no force. Thus in the aforesaid view of the matter this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Conviction of the appellant under Section 20(b)(ii)(c) of the Act, 1985 is hereby affirmed.

14. Heard on the point of sentence.

Minimum sentence for offence under Section 20(b)(ii)(c) of the Act, 1985 is RI for ten years and fine of Rs.1,00,000/-. The trial Court awarded minimum sentence and less than minimum sentence cannot be awarded, therefore, sentence part is also not liable to be interfered with.

15. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju