

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 820 of 2011**

- Santosh Pujari s/o. Kethbo Pujari, aged about 40 years, r/o. Village Dumarguda, PS Dharamgarh, Distt. Kalahandi (Orissa)

---- Appellant

Versus

- State of Chhattisgarh through PS Gariyaband, Raipur (CG).

---- Respondent

For Appellant : Mr. C.R. Sahu, Advocate
 For respondent/State : Mr. Lav Sharma, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****03-12-2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-09-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Raipur in Special Case No. 22 of 2010 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 3-6-2010 at about 2.30 pm Assistant Sub Inspector namely Jeevrakhanlal Dhruv who was posted at Police Station Gariyaband received

information through unknown informer regarding possession of Ganja in the Bus. After getting the said information panchnama was prepared by Police staff which is Ex.P/9 and along-with weighing machine he rushed to the spot along with police personnel and independent witnesses and made search inside the Bus. After searching seized Ganja from the possession of the appellant from the bags which was found to be 24 kgs 500 grams. Two samples of 100 grams each from each packet were collected and same were sent for chemical examination to FSL, Raipur and test of Ganja was found to be positive. 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) Mandatory provisions of the Act, 1985 have not been complied with, therefore, finding arrived at by the trial Court deserves to be set aside.
- ii Independent witnesses have turned hostile before the trial Court, therefore, the statement of other witnesses is doubtful.
- lii) There is totally non-compliance of Section 50 of the Act, 1985 and for that reason

conviction is not liable to be maintained.

- iv) There are various omissions and contradictions in the testimonies of prosecution witnesses, but the trial Court failed to consider the same while passing the impugned judgment, therefore, finding of conviction and sentence 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 seven witnesses. To nullify the charge, defence side has not examined any witness. As per version of PW/4 Jeevrakhanlal Dhruv Asst. Sub Inspector at Police Station Gariyaband, he received information from informer (Mukhbir) at about 12.30 in the noon that one person is taking Ganja in the bus bearing registration No. CG 07-E -0502 in bags. He forwarded the said information to his superior officer i.e., Sub Divisional Officer (P) as per Ex.P/15. He further deposed that

thereafter he prepared search panchnama without warrant as per Ex.P/2 and called two independent witnesses namely Prem Kumar Soni and Narendra Tiwari in the Police Station and thereafter he rushed to the spot with Head Constable and Constables where one bus was standing of the same number near Bhonsle complex where the appellant was found sitting in the bus. After enquiry he disclosed his name as Santosh Pujari. Thereafter, one notice under Section 50 of the Act, 1985 was given to him and after notice he gave consent to be searched by the said Police Officer. First Police Officer and his staff were searched, but no objectionable article was found in their possession. Thereafter, three bags kept in the bus by the appellant was searched in which Ganja like substance was found which was seized and in primary examination it was found to be Ganja. One Ashish Sharma brought the balance for weight and after weight it is found to be 24 kgs and 500 grams in all. Two samples of 100 grams each were prepared from each packet and specimen seal was also prepared and after seizure same was handed over to Incharge of Malkhana. Version of this witness is supported by the version of Head Constable Ashwani Kanojiya (PW/8) who was Incharge of Malkhana at Police Station Gariyaband. As per version of this witness he received packets of Ganja to the tune of 24 kgs

and 500 grams which was kept by him in safe custody of Malkhana and same was recorded at serial number 34 in Malkhana register. Samples appearing marked as A, B, C, D & E were sent to FSL, Raipur through Constable Mangtu Khan No.1189. Version of this witness is supported by version of Inspector Lambodar Patel (PW/2). As per version of this witness, seized samples were sent to FSL Raipur through constable Mangtu Khan and he brought acknowledgment of deposit in FSL as per Ex.P./14. Report of FSL is received as per Ex.P/15 in which test of Ganja was found positive. As it is a case of search from bag Section 50 of the Act, 1985 is not application. Other provisions of Section 42(2), 55 and 57 of the Act, 1985 have been complied looking to the evidence.

7. True it is that Pradeep Kumar Sonwani (PW/5) has not supported the version of seizure, but the fact remains that if this witness was not present at the time of seizure, he is not real witness and if he was present during seizure and suppressing this fact before the trial Court, his version is not reliable. Weighing of Ganja is corroborated by the version of Ashish Sharma (PW/6) and seizure of Ganja is corroborated by the evidence of Narendra Tiwari (PW/1). There is no material contradiction or omission in the statement of Assistant Sub Inspector Jeevrakhanlal Dhruv (PW/4). Minor

contradictions and omissions which do not cause root of the case are insignificant for deciding the issue. Possession of the appellant of the Ganja was established by the prosecution evidence and he failed to discharge his burden of rebuttal. There is nothing on record that the appellant has been falsely roped in the said charge. His explanation is only denial which is merit-less. In absence of explanation, there is nothing on record to discard the testimony of the prosecution witnesses. 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. As per charge-sheet, seized article was sent to Court. FIR was lodged on the basis of information from a private person.

8. Commercial quantity of Ganja is 20 kgs. In the present case, the appellant was in possession of 24 kgs and 500 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