

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 156 of 2012**

- Chhabilal Kurre S/o Sukal Kurre, Aged about 22 years, R/o Village Baikunthpur (Nagpur) Village Serdha, Police Station Podhi, Distt. - Korla C.G. , Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh through Police Station – Sihawa, District Dhamtari, C.G., Chhattisgarh

---- Respondent

For Appellant : Shri Sunil Sahu, Advocate.

For Respondent/State: Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****28/11/2018**

1. This appeal has been preferred against judgment dated 29-09-2011 passed in Special Criminal Case No.01/2011 by Special Judge (N.D.P.S. Act), Dhamtari, C.G. convicting the appellant under Section 20(II) of the N.D.P.S. Act, 1985 and sentencing him with R.I. for 10 years along with fine Rs.1,00,000/- with default stipulation.
2. The case of the prosecution, in brief, is this that, on 04-10-2010 at about 09:30 p.m. police personnel of police station Sihawa stopped a car bearing registration No.CG 04/ZD/ 2901 and after following the procedure as laid down in the provisions of the N.D.P.S. Act made search in presence of the witnesses. 10 jute bags and one plastic bag was found inside the car. The stuff inside the jute bags and plastic bag was taken out and tested which was found as Ganja the narcotic substance. On weightment procedure the weight of recovered Ganja was found to 1.4 quintals. Samples were prepared

and sealed and seizure were made. After completion of these proceedings Sub-Inspector Naresh Deewan (PW-11) proceeded to the police station where he lodged the FIR Ex.-P/8. The investigation was completed by SHO Pradeep Kumar Sori (PW-10). After receipt of the FSL report regarding the sample of Ganja the charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 20(B) of the N.D.P.S. Act, to which he denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the CrPC in which he denied all the incriminating evidence brought against him by the prosecution, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by the counsel for the appellant that the conviction against the appellant is bad in law without there being any support of reliable and independent evidence. The search witnesses present on the spot Naresh Baghel (PW-9) has not supported the prosecution case and another search witness Tarachand was not examined. The conviction is based only on the evidence of police witnesses, which cannot be regarded as reliable evidence. It is also submitted that the procedure under Section 50 of the N.D.P.S. Act was also not complied with. Hence, because of failure of Investigator to complete the mandatory processes, the conviction

against the appellant is not sustainable. Therefore, the appellant be acquitted.

7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt. There is no such established rule to disbelieve statement of the police witnesses. The police personnel who raided the spot and made seizure and the police official who has completed the investigation have clearly deposed against the appellant and the other members of the raiding party have also supported the prosecution. Hence, there is no room for any interference in the impugned judgment.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Sub-Inspector Naresh Deewan (PW-11) has stated that he received the confidential information on 04-10-2010 and on the basis of the same, he recorded the information in police diary vide Ex.-P/21 and prepared mukhbir panchnama Ex.-P/14. He has stated that as there was no time, he proceeded direct to the spot, after sending requisite information to the superior official. He arrived on the spot and after creating the blockade he stopped the car which was occupied by this appellant. He informed the appellant that the appellant has right to ask to be searched in presence of Magistrate or Gazetted Officer and a notice under Section 50 of the NDPS Act was served upon him vide Ex.P/16. After formal search of the members of the raiding party and the witnesses, the vehicle bearing registration No. CG

04/ZD/2901 was searched. 10 jute bags and one plastic bag was found inside the car and the search panchnama was prepared vide Ex.-P/17. The stuff inside the jute bag and the plastic bag were taken out and tested, they were narcotic substance and it was found that the stuff was Ganja, the narcotic substance. The identification panchnama was prepared vide Ex.-P/18. Weightment procedure was conducted vide Ex.-P/4 and the weight of the contraband was found to be 1.4 quintals. Seizure of the all the article recovered in search and the samples were made vide Ex.-P/19 and the car and the driving license were also seized Vide Ex.-P/20. Subsequent to that, he has stated that he lodged an unnumbered FIR (Ex.P/25) on the spot. In cross-examination he has remained unshaken with respect to the statement given by him in his examination-in-chief and there is no other statement so as to make out that his statement in examination-in-chief stands contradicted in any manner.

10. ASI D.S. Hirwani (PW-5) has stated about lodging numbered FIR Ex.-P/8 on the basis of the unnumbered FIR, which is unrebutted and unchallenged.
11. Head Constable Alakh Ram Sirdar (PW-6) has stated about his presence at the time of search and seizure and his statement has remained unrebutted in his cross-examination.
12. Constable Deepak Singh (PW-7) has stated that he was present at the time of weightment procedure and the search of the contraband was found to be 1.4 quintals which was in possession of the appellant. There is no contradictory statement in his cross-examination.

13. S.I. Tamesh Kumar Sahu (PW-8) has also stated about his presence at the time of the stopping the car and the appellant and searching the same. He has also stated about the recovery of the contraband from the car which was in possession of this appellant and his statement could not be shaken in his cross-examination.
14. SHO Pradeep Kumar Sori (PW-10) is the Investigating Officer who has done the investigation subsequent to lodging of the FIR and recorded the statement of the witnesses.
15. After close scrutinizing of all the evidence present in this case, I am of this opinion that although there is no support of the independent witnesses of search and seizure, but the statement of S.I. Naresh Deewan (PW-11) who raided and made seizure of the contraband being supported with the statement given by other police witnesses who were party to the raid is clearly beyond reasonable doubt. As there is no such rule that statement of police witnesses shall always be disbelieved and there is no reason demonstrated from the whole deposition of these witnesses that they have any ulterior motive or any personal reason to falsely implicate the appellant, hence, I am of this opinion that the statement given by police witnesses were trustworthy and the trial Court has rightly relied on the same to give the finding of conviction against the appellant. Hence, after due consideration, I am of this view that this appeal is without any substance and therefore, the same is dismissed accordingly
16. The appeal stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge