

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 242 of 2012**

Rakesh Gautiya S/o Bholaram Gautiya, aged about 20 years, R/o village Bilkhaka, Chauki Mathotal, Thana-Gauhalpur, District Jabalpur (MP)

---- Appellant**Versus**

State Of Chhattisgarh Through Thana In charge Police Station Kawardha, District Kabirdham (CG)

---- Respondent

For Appellant : Shri Samir Singh, Advocate

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****05/12/2018**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24.2.2012, passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), Kabirdham (Kawardha) (CG) in Special Case No. 28/2011, wherein the trial Court has convicted the appellant under Section 20(b) (ii) B of the said Act and sentenced to undergo R.I. for four years and fine of Rs.50,000/- with default stipulation.
2. As per the prosecution case, Assistant Sub-Inspector of Police namely- Laxmikant Shukla, who was posed at Police

Station Kawardha received information that one person is having in possession of contraband article Ganja. The said information was recorded into Roznamcha Sanha and other documents and the information was given to superior officers. Thereafter, the said Sub-Inspector along with independent witnesses and police personnel rushed to the spot. After search of the bag of the appellant, contraband article Ganja was found which was seized and after completing the legal formalities, the appellant was charge-sheeted and convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits that statements of the witnesses are not reliable because there are material contradictions and omissions and improvements in their versions, therefore, finding arrived at by the trial Court is not sustainable.
4. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. As per version of Assistant Sub-Inspector, Laxmikant Shukla (PW3), he received information that a young boy of age about 20-22 years, is having possession of contraband article Ganja and is standing near bus stand Kawardha.

This information was recorded in Roznamcha Sanha and 2 independent witnesses were called namely- Kunjbihari Pali and Sahban Khan. The information was sent to Additional Superintendent of Police Kabirdham and thereafter, the witnesses rushed to the spot. On asking, he stated that his name Rakesh Gotiya and when the witnesses and Police Officers were searched, no objectionable article was found in their possession and when bag of the appellant was searched, 2 packets of contraband article Ganja were found. Upon weight, it was found 10kg and 200 gm. Two samples of 50-50 gm each from one packet, in all, four samples were separated from the seized article and it was sealed on the spot and special seal was also prepared. As per version of this witness, the seized articles were handed over to In charge Malkhana. As per version of Head Constable, Sukhlal Singh Dhurve (PW4), he received the seized article as In charge of Malkhana and recorded the same into Roznamcha Sanha as per Ex. P/30 to P/35.

6. As the article was seized from the bag, it is not a case of personal search, therefore, Section 50 of the NDPS Act is not applicable. The seized articles were kept in safe custody of Malkhana and which is compliance of Section 55 of the NDPS Act. Again from the statement of Laxmikant Shukla (PW3), it is clear that he reported the seizure and

search to the Additional Superintendent of Police Kabirdham as per Ex. P/24 and P/25 which is compliance of Section 57 of the said Act. From the statement of Head Constable, Sukhlal Singh Dhurve (PW4), it is established that sealed packets were sent to F.S.L. from the Malkhana. As per version of Laxmikant Shukla (PW3) acknowledgement was received as Ex. P/28 from the Laboratory and report of Laboratory was received as per Ex. P/29 in which test of Ganja was found positive. Version of Laxmikant Shukla (PW3) is supported by the version of Kunjbihari Pali (PW1) who is an independent witness and again it is supported by the version of Santosh Thakur (PW2).

7. Looking to the supportive piece of evidence it is established that the proceedings were adopted as per rules and there is no flaw which can doubt the veracity of any witness. As per charge sheet, seized articles were sent to Court. The FIR is lodged on the information of private informant.
8. The appellant was under obligation to explain the incriminating circumstances established against him but, his case is simple denial and repeat the same in his examination under Section 313 Cr.P.C., therefore, case of the defence is merit less and arguments advanced on behalf of the appellant is not sustainable.

9. Quantity of Ganja is 10 kg and 200 gm, which is neither small quantity nor commercial quantity. Case of the appellant falls under Section 20 (b) (ii) B of the NDPS Act, for which the trial Court has convicted and sentenced him and this Court has no reason to record a contrary finding, and the same is hereby affirmed.

10. **Heard on the point of sentence.**

11. The trial court has awarded jail sentence of R.I. for 4 years and fine of Rs.50,000/-, which cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the Jail authorities, the appellant has suffered full term of his jail sentence and has been released after getting benefit of remission, therefore, no order for his arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE