

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Judgment on :20.09.2018****Judgment delivered on : 04/10/2018****CRA No. 322 of 2016**

- Ajit Singh Namdeo S/o Maninath Namdeo, Aged About 25 Years, R/o Bramha Para, Ambikapur, Presently Resided Namnakala, Behind Collectorate, District Surguja, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Ambikapur, District Surguja, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant : Shri Ashok Kumar Shukla, Advocate.

For Respondent/State: Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****04/10/2018**

1. This appeal has been preferred against judgment dated 23-01-2016 passed in Special Criminal Case No.19/13 by Special Judge (N.D.P.S. Act), Ambikapur, Distt. Surguja, C.G. convicting the appellant under Section 21(B) 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 26-04-2013 Sub-Inspector R.K.Nishad (PW-5) received confidential information that the appellant who deals with sale, purchase of brown sugar is waiting for customers. R.K. Nishad (PW-5) recorded the information in Rojnamcha and dispatched the same to the superior authority

immediately. As he had no time to obtain search warrant he proceeded immediately to the spot where he found the appellant present in front of his house. The appellant was served with notice under Section 50 of the N.D.P.S. Act, on which the appellant consented to be searched by R.K. Nishad (PW-5). Firstly, the police team was searched by the appellant and nothing objectionable was found in their possession and thereafter, the appellant was searched in presence of witnesses. One polythene packet was found in the right pocket of his full-pant, the packet was opened and the contents were identified as narcotic substance brown sugar. Weightment panchnama was conducted. Thereafter, the packet was sealed and seized. Subsequent to that, the FIR was lodged, the investigation was conducted and charge sheet was filed.

3. The appellant was charged with offence under Section 21(B) of the N.D.P.S. Act. He pleaded innocence 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. On completion of the trial, the impugned judgment was passed in which the appellant has been convicted and sentenced as aforementioned.
5. It is submitted by the counsel for the appellant that the judgment of conviction against the appellant is totally erroneous and without support of legally admissible evidence against him. Firstly, the provisions under Section 50 of the N.D.P.S. Act has not been

complied with by the investigator and the appellant was not given opportunity to be searched before a Magistrate or Gazetted Officer. Secondly, the complainant/first informant and the investigator in this case are the same person, i.e., R.K. Nishad (PW-5). Hon'ble the Supreme Court has in a recent judgment delivered in Criminal **Appeal No.1880 of 2011 (Mohan Lal Versus The State of Punjab)** made a pronouncement in three judges Bench on August 16, 2018 and laid down the law that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Hence, it is prayed that the appellant may be acquitted of the charge.

6. Per contra, learned counsel for the State opposing the appellant's submission submits that the prosecution has proved its case beyond reasonable doubt and there is no room for interference in the impugned judgment.
7. Heard learned counsel for the parties and perused the record of the trial Court.
8. Sub-Inspector R.K.Nishad (PW-5) has stated that after receiving confidential information he arrived on the spot and found the appellant present. The notice under Section 50 of the N.D.P.S. Act (Ex.-P/25) was served upon him. It is stated that the appellant gave consent to be searched by this witness, regarding which consent panchnama (Ex.-P/13) was recorded on the spot in presence of the witnesses. Subsequent to that, R.K. Nishad (PW-5) himself was searched by the appellant and no objectionable substance was

found in his possession vide Ex.-P/14. R.K. Nishad (PW-5) further states that on searching the appellant vide Ex.-P/17 he was found in possession of one white polythene packet kept in his right pocket of the pant, which was recovered vide panchnama Ex.-P/18 and identified as brown sugar vide Ex.-P/19. The seizure of that article was made vide Ex.-P/20. After weightment of the article the same was sealed vide Ex.-P/21. Weightment procedure was conducted vide Ex.-P/1 and weight of the brown sugar was found 6.94 grams. After completing these proceedings, R.K. Nishad (PW-5) came back to the police station and recorded the FIR (Ex.-P/25-II). He has also stated that conducting further investigation he has recorded the statement of witnesses and sent the seized article for FSL examination vide Ex.-P/33 and also filed the charge sheet after completion of the investigation.

9. Neetish Tamrakar (PW-1) is weightment witness, who, has not supported the prosecution case and has been declared hostile. Similarly, Mo. Manjar Hussai @ Sonu (PW-4) is a witness of search and seizure, who, has not supported the prosecution case and has been declared hostile by the prosecutor. Head Constable Isdor Ekka (PW-2) has received the seized article in Malkhana and handed over the same to Constable Nirmal Khalkho (PW-6) for sending of the same to FSL laboratory and Constable Alijan Toppo (PW-3) was posted in the office of C.S.P., Ambikapur, who, received the information dispatched by R.K. Nishad (PW-5) before he had proceeded for the spot to conduct the raid.
10. After scrutinizing the evidence of all the witnesses, it appears that

the only witness who has stated against the appellant is R.K. Nishad (PW-5) who happens to be the person who has conducted the raid, thereafter, lodged the FIR being himself the lodger and the person recording the FIR and has also completed rest of the investigation process. Hence, it is a case in which the principle laid down by Hon'ble the Supreme Court in the case of Mohan Lal Versus The State of Punjab (supra) has a direct bearing.

11. Hence, after due consideration on the facts and circumstances of this case, it is found that on the basis of principle laid down by Hon'ble the Supreme Court the evidence of R.K. Nishad (PW-5) cannot be solely relied upon to convict the appellant for the offence he is charged with. Hence, the conviction of the appellant on such evidence cannot be upheld by this Court.
12. Resultantly, the appeal filed by the appellant is allowed. Conviction of the appellant is set aside. He is acquitted of the charge under Section 21(B) of the N.D.P.S. Act. He be set at liberty forthwith, if not required in any case.
13. The appeal stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge