

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1005 of 2015

Smt. Asha Pandey, W/o. Shri Raju Pandey, Aged About 40 Years, R/o. Bramhanpara Ambikapur, Thana - Ambikapur, Civil and Revenue Distt. Surguja (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through : The District Magistrate, Ambikapur, Distt. Surguja Chhattisgarh.

-----Respondent

For Appellant	: Mr. Sunil Sahu, Advocate
For Respondent/State	: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/08/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the Special Judge (N.D.P.S. Act), Ambikapur, District – Surguja (C.G.) in Special Criminal Case No.18/2013 on 05.05.2015 convicting the appellant for the offence under Section 21 (B) of N.D.P.S. Act and sentencing him to under go R.I. for 10 years along with fine of Rs.1,00,000/- and in default of payment of fine, the appellant is required to further under go R.I. for 1 year separately.
2. Facts of the case in brief is this that a confidential information was received by the Sub-Inspector Sanjeev Bairagi (P.W.-9) in Police Station – Ambikapur on 25.04.2013, that the appellant is dealing in sale and purchase of brown sugar and keeps brown sugar in her possession. Sub-Inspector, Sanjeev Bairagi (P.W.-9) had no time to

obtain search warrant, he immediately dispatched one information to the superior office and proceeded to the spot along with the team, in which the women constable were member. The appellant was found in her place of residence, a notice under Section 50 of N.D.P.S. Act (Ex.P-25) was served upon her. The appellant gave consent to be searched by the (P.W.-8.). Subsequent to that women constable – Dolly Das (P.W.-8) searched the person of appellant and found concealed in her cloth one packet containing contraband brown sugar, which was weighted and found to be of weight 10 grams. The articles recovered was seized and seizure memo according to Ex.P-14 was prepared. The seized articles were sent for FSL examination. FSL report Ex.P-28 firmed the presence of brown sugar in the seized article. FIR has been lodged and after completion of investigation, charge-sheet has been filed before the concerned trial Court.

3. Appellant was charged with offence under Section 21 (B) of N.D.P.S. Act, 1985. The appellant denied the charges and prayed for trial. The prosecution examined as many as 9 witnesses on its behalf. On examining the appellant under Section 313, she denied all the incriminating evidence against her and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment

of conviction without there being any basis of reliable and cogent evidence in support of the charge. First ground in appeal is the non-compliance of Section 50 of the N.D.P.S. Act as the seizure memo Ex.P-8 mentions about the search team made by the women constable Dolly Das, who is not a signatory to the panchnama Ex. P-8. Second ground is the hostility of the independent witness of search and seizure, who have not supported the case of the prosecution. Hence, there had been no evidence on which the finding of conviction could have been based upon by the trial Court, because of which, the conviction of the appellant is bad in law. In the alternative, it is submitted that, if this Court is not inclined to allow this appeal and acquit the appellant, in that case, it is prayed that the appellant has suffered jail sentence for about five years and four months, which is sufficient looking to the quantity of the contraband seized from her. Hence, it is prayed that in such case, the sentence part be modified to the period of detention already undergone and also prayer has been made for reduction of fine amount.

5. Counsel for the State opposes the grounds in appeal and the submissions made in this respect. It is submitted that though the independent witnesses have not supported the prosecution case, but the member of the raiding party, who are the witnesses in this case have clearly supported the version of the investigating officer and only for the reason that they are the police officers and constables, they should not be disbelieved. Hence, the prosecution has proved its case beyond all reasonable doubts and there is no

room for interference in the impugned judgment of conviction and order of sentence.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. Sanjeev Bairagi (P.W.-9) has stated that on the date of incident, he received confidential information that the appellant is dealing in purchase and sale of brown sugar. He immediately summoned the witnesses through notice and after their presence prepared a confidential information Ex.P-1. This witness immediately dispatched one information to the superior office and proceeded to the spot along with the team. House of the appellant was raided with a team of this witnesses, where the appellant was served with notice Ex.P-25 in compliance of Section 50 of N.D.P.S. Act, in which she gave consent letter vide Ex.P-4 agreeing to be searched by the raiding team. The female constable Dolly Das (P.W.-8) was first searched by the appellant vide Ex.P-7 and thereafter, the appellant was searched by her vide Ex.P-8. In this search, one polythene packet was found concealed in the clothes of the appellant, which was recovered and seized vide Ex.P-14. The seized articles was identified as brown sugar by the raiding team and the same was preserved, sealed immediately after weighment. The seized article was dispatched for examination by the FSL. FSL report, Ex.P-28 has been received, which confirms presence of brown sugar in the seized article. In cross -examination, he has remained firm on his statement and there is no other statement made by him so as to

contradict his statement made in examination-in-chief.

8. Although, the independent witnesses namely Shravan Dubey (P.W.-2) Ghanshyam (P.W.-3) have not supported the case of the prosecution, but the member of the raiding party Dolly Das (P.W.-8) has supported the statement given by the investigating officer, Sanjeev Bairagi (P.W.-9) has stated in support regarding process of search and seizure, which is sufficient to corroborate the statement given by the Sanjeev Bairagi (P.W.-9). In cross-examination, both these witnesses remained firm on their statement and there is no other statement made by them so as to contradict their statement made in examination-in-chief. Rest of the witnesses examined by the prosecution are witness of investigative procedure, who have supported the case of the prosecution.
9. Considering on the grounds raised in this appeal, it is apparent that constable Dolly Das (P.W.-8) is not signatory of Panchnama Ex.P-8. This is simply an omission on the part of the investigation officer, which is supplemented by statement given by Dolly Das (P.W.-8) herself, hence, it can not be said that there is no compliance of Section 50 of N.D.P.S.. Similarly, the hostility of the independent witnesses itself would not be sufficient to destroy the prosecution case as the statement of Investigating Officer remained unshaken and there is no such suggestion or question against the integrity of this witness, which is equally supported by the evidence of Dolly Das (P.W.-8). Hence, for this reason, it is found that the finding of conviction recorded by the trial Court does not suffer from any

infirmity.

10. Considered on alternative ground raised by the appellant. The appellant is in jail since 25.04.2013, which shows that her detention period is now 5 years 4 months exactly. The quantity of contraband in this case is more than small quantity but lesser than commercial quantity, for which the sentence of imprisonment may extend to 10 years and fine which may extent to Rs.1.00 Lakhs. It appears that the appellant has been sentenced with maximum sentence, which can be imposed upon her under the provisions of Section 21 (B) of N.D.P.S. Act. As there is no criminal antecedents reported with respect to the appellant and for the reason that she is women and has under gone long period of detention, which can be regarded as sufficient, I am of this view that prayer of reduction of sentence can be allowed in this case. Hence, after due consideration on all the facts and circumstances of the case, this appeal is allowed in part. The conviction of the appellant in the judgment is upheld, whereas, the sentence part awarded to the appellant is set-aside and instead of that, the appellant is now sentenced with period of detention in custody already undergone so far and with fine of Rs.10,000/-. In case of default of payment of fine, the appellant shall be required to further under go for a period of two months rigorous imprisonment. The appellant is reported to be in jail, she be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge