

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.182 of 2013

Shankar Chand, S/o Late Banchha Chand, aged about 33 years, R/o Gram Subhash Nagar, Charcha Colliery, P.S. Charcha, Tahsil Baikunthpur, District Korla

---- Applicant

versus

State of Chhattisgarh through District Magistrate Korla, District Korla, Chhattisgarh

--- Respondent

For Applicant	:	Shri Pragalbha Sharma, Advocate
For Respondent	:	Shri Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

30.11.2018

1. The instant revision has been preferred against the judgment dated 2.3.2013 passed by the 1st Additional Sessions Judge, Manendragarh at Baikunthpur, District Korla in Criminal Appeal No.119 of 2012, whereby the Additional Sessions Judge has upheld the conviction and sentence imposed upon the Applicant vide judgment dated 26.10.2012 passed by the Chief Judicial Magistrate, Baikunthpur, District Korla in Criminal Case No.157 of 2008, whereby the Applicant has been convicted for offence under Section 20(b) of the N.D.P.S. Act (for short 'the Act') and sentenced with R.I. for 6 months and fine of Rs.5,000/- with default stipulation.
2. As per the prosecution story, on 12.12.2007 Excise Sub-Inspector D.N. Sai (PW2) received an information from informant that the Applicant possesses illegal Ganja for the purpose of sale. He reached the spot along with his staff, gave a notice under Section

50 of the Act. The Applicant consented for his searched through him. Thereafter, he searched the Applicant. 350 Grams of Ganja kept in a white plastic under the cot of a room of the house of the Applicant was recovered and seized. Sample packets were also prepared. Other formalities were done. Sample packets were sent for chemical examination also. After investigation, charge-sheet has been filed. Learned CJM framed charges under Section 20(b) of the Act. As many as 6 witnesses were examined by the prosecution. Statement of the Applicant was recorded under Section 313 Cr.P.C. in which he denied the guilt. After trial, the CJM convicted and sentenced the Applicant as mentioned above which was also affirmed by the Appellate Court. Thus, this revision.

3. Shri Pragalbha Sharma, Learned Counsel for the Applicant submits that conviction of the Applicant by the Courts below is improper, erroneous and contrary to the law, facts, circumstances of the case. Both the Courts below have failed to appreciate that the evidence adduced by the prosecution is utterly insufficient for conviction of the Applicant. He further submits that allegedly the seized Ganja was found below the cot inside the house. There is nothing on record on the basis of which it is established that the house in question was in exclusive possession of the Applicant. From the evidence it is also clear that the house and shop are situated adjacent to each other. Other people also reside in the said house. Access of other people to the said house cannot be denied because the same is situated adjacent to the shop. In these circumstances, it is not established beyond reasonable doubt that the Ganja was seized from exclusive possession of the Applicant. Therefore, the Applicant is entitled for benefit of doubt.

4. State Counsel opposes the above submission.
5. I have heard Learned Counsel for the parties and perused the record.
6. There is no dispute on the point that Ganja was recovered and seized from under the cot kept in a room of the house. Investigating Officer D.N. Sai (PW2) in paragraph 8 of his cross-examination has admitted the fact that he did not see or examine any document relating to ownership of that house. He has also admitted the fact that he did not collect the information regarding how many persons and which persons reside in that house. He has also admitted that from the room from where the Ganja was recovered and seized could belong to other family member of the Applicant. In paragraph 10 also, he has admitted that the house consists of 5 rooms and shop is situated in front of the house and behind the shop a bedroom is situated from where the Ganja was recovered. He has also admitted the fact that any person can enter in the shop and house from outside.
7. Inspector G.S. Nuruti (PW1) (one of the member of the trap party) has also admitted that when they reached the spot at that time the house was open. This witness has been unable to state that whether the house was rented house or was owned by the Applicant.
8. Constable Gopalji Ram (PW5) (one of the member of the trap party) has also admitted the fact that other members of the family of the Applicant also reside in that house.

9. Other independent witnesses Pankaj (PW3) and Anil Singh (PW4) have not supported the case of the prosecution and declared hostile.
10. From the evidence adduced by the prosecution and admissions made by the prosecution witnesses, it is clear that the house from where the Ganja was recovered was owned by the Applicant or was in his exclusive possession is not established. From the evidence, it is also clear that other members of the family of the Applicant were also residing in that house. The location of the room from where the Ganja was recovered is that any person from outside can enter. From the evidence, it is also clear that a shop is situated in front of the front room of the house and in that shop many persons remain gathered. In these circumstances, from the record itself , it is clear that both the Courts below have not appreciated the fact that the house in question from where the Ganja was recovered was in exclusive possession of the Applicant is not established. In these circumstances, the Applicant is entitled to get benefit of doubt. Thus, the judgments of the Courts below are not in accordance with the evidence available on record.
11. Resultantly, the revision is allowed. The Applicant is acquitted of the charges framed against him.

Sd/-
(Arvind Singh Chandel)
Judge