

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 557 of 2013**

- Nagesh Dewangan S/o Guhri Dewangan Aged About 42 Years R/o Near Durg Mandir Kilapara , Rajnandgaon C.G. Civil And Rev. Distt. Rajnandgaon C.G. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - The P.S. Basantpur , Distt. Rajnandgaon Civil And Rev. Distt. Rajnandgaon C.G., Chhattisgarh

---- Respondent

For the Appellant : Mr. Sanjeet Kumar Kushwaha, Advocate.
 For the State/Respondent : Mr. Ashish Shukla, Panel Lawyer.
 For Objector : Mr. S.S. Rajput, Advocate.

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

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 17.4.2013 passed by the learned Special Judge (NDPS) Act, Rajnandgaon, Chhattisgarh in Special Case No.07/2012 convicting the accused/appellant under Section 20(B) & II (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to undergo RI for 10 years with fine

of Rs.50,000/- plus default stipulation.

2. The prosecution case, in brief, is this that on 12.9.2012 H.C. Pandey PW-10 received secret information from the informer and on that basis, as there was no time to obtain search warrant, he recorded Panchnamas of ExP-3 and forwarded an intimation to his superior Officer after making an entry in rozmancha. After summoning the witnesses, he raided the spot with a team of other police officers. The raiding party found four packets of narcotic substance (ganja) kept in concealment and the same were searched vide ExP9 from the spot. The substance contained in four packets was identified as ganja vide ExP10 and when it was weighed vide Ex.P-11, the total quantity was found to be 14 kg. Samples were prepared vide ExP-13 and seized vide ExP-14, FIR (Ex.P-33) was recorded in the police station by H.P. Pandey PW-10 as the informant. Seized articles were sent for FSL examination from where report Ex.P-20 has been received confirming that the contents of samples were narcotic substance ganja. After completion of investigation charge-sheet was filed before the concerned Court.
3. The appellant was charged for the offence under Section 20(B) & II (B) of NDPS Act, to which he denied and prayed for trial. Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false

implication. No witness was examined in defence. After completion of trial, the trial court vide impugned judgment convicted and sentenced the appellant in the manner as mentioned hereinabove.

4. It is submitted by counsel for appellant that appellant has been erroneously convicted without there being any evidence on record showing his complicity beyond reasonable doubt. The investigation in this case cannot be called as fair investigation as the lodger of FIR and the investigator is one and the same person and this practice has been deprecated by the Hon'ble Supreme Court in Mohan Lal Vs. State of Punjab reported in AIR 2018 SC 3853, according to which, in absence of fair investigation the trial gets vitiated. Apart from that no option was given to the appellant to get himself searched in presence of Magistrate or Gazetted Officer. It is also argued that the house from where the contraband was searched and seized was shared by the appellant's wife, children and his brother-in-law and on the date of incident they were also present, hence, it cannot be said that the contraband was recovered and seized from the exclusive possession of the appellant. Under these circumstances, it is prayed that the appellant be acquitted by extending him benefit of doubt.
5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the

counsel for the appellant. It is submitted that prosecution has proved its case beyond reasonable doubt. Although the ratio laid down by Hon'ble Supreme Court in Mohan Lal's case (supra) speaks on the fairness of trial but the element of prejudice caused to the appellant in such search and seizure has to be examined first, hence, no case is made out for acquittal. Hence, it is prayed that the appeal be dismissed.

6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. It is not disputed in this case that S.I. H.P. Pandey PW-10 was the person who received secret information and thereafter went to the spot, made a search and on recovering the article made the seizure and completed other proceedings. Admittedly, it is he who lodged FIR as an informant of the offence committed. Subsequent to that, in the course of investigation he has also recorded statements of witnesses and also completed other procedure before filing of the charge-sheet.
8. In Para-25 of Mohan Lal's case (supra) the Hon'ble Supreme Court has held thus:-

“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in

this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held 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. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

9. On the basis of discussions made hereinabove and in view of the law laid down by the Hon'ble Supreme Court in Mohan Lal's case (supra) I am of this opinion that conviction against the appellant cannot be upheld for the reason that the entire trial stands vitiated for want of fair investigation.

10. Accordingly, this appeal is allowed. Conviction and sentence of the appellant under Section 20(B) & II (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is hereby set aside and the appellant is acquitted of that charge.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha