

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 258 of 2015**

- Lalu @ Jaidhar Bhaisal S/o Shri Jagannath Bhaisal Aged About 28 Years
R/o Machchipada Rathour, P.S. Khaprakhol, District Balangir Orrisa

----Appellant**Versus**

- State of Chhattisgarh Through District Magistrate, Raipur, District Raipur
C.G.

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/02/2018**

1. This appeal has been preferred by the appellant u/s 374 of Cr.P.C, being aggrieved by the impugned judgment dated 28.01.2015 passed by the Special Judge, N.D.P.S., Raipur in Special Case No.852/2014 whereby the appellant has been convicted u/s 20 (b) (ii) (B) of N.D.P.S. Act, and has been sentenced to undergo RI for 5 years & fine of Rs. 50000/- and in absence of payment of fine amount, two years additional R.I. has been ordered.
2. As per the prosecution case, on an information received by the constable Shankar Chandrakar (PW-11) on 24.06.2014 that a person is coming from Odisha carrying 3 bags of cannabis and is waiting for customer in the railway station to

sell the same. Having received such information, the same was reduced into writing, thereafter after fulfilling necessary formalities and reasons were recorded for not obtaining the warrant for search and thereafter notice was served under Section 50 of the N.D.P.S. Act to the accused giving him option to get himself examined by any Gazetted Officer or Magistrate. Having given the consent to be searched by Police, the accused was searched and nothing was found from him in person but from 3 bags which he was carrying 16 K.G. cannabis like substance was recovered. Having examined the same by smelling, rubbing and burning it was found to be cannabis. Thereafter, the seizure was made and the appellant was arrested. Thereafter from the seized cannabis samples were taken out and the seized cannabis was deposited in the Malkhana. Samples were sent for FSL and the FSL report affirmed the fact that it was cannabis. Thereafter, after investigation, the charge-sheet was filed.

3. During the course of trial, the appellant abjured the guilt and claimed to be tried. Prosecution on their behalf has examined 11 witnesses. The appellant in his statement under Section 313 Cr.P.C. stated that he is innocent.
4. Learned counsel for the appellant submits that the prosecution has failed to comply the mandatory sections of N.D.P.S. Act and also no compliance of Section 50 N.D.P.S. Act was made and the seizure witnesses have not categorically supported the case of the prosecution. Therefore, under the circumstances the conviction made by the Court below is

liable to be set aside.

5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the appellant and submit that the order of the Court below is well merited which do not call for any interference.
6. I have heard learned counsel for the parties and perused the documents. The I.O. Shankar Chandrakar in this case has been examined as PW-11. In his Court statement he has stated that on 24.06.2014 he received an information that a person aged about 28 – 30 years wearing green T-Shirt has come from Odisha carrying 3 bags of cannabis and to sell the same is waiting under the over bridge of railway station in between platform No.2 & 3. The same was reduced into writing vide Ex. P-1. The perusal of Ex. P-1 also affirms the same that the said information was reduced into writing. Subsequently, Mukhbir Suchna Panchnama was prepared vide Ex. P-2. Perusal of Ex. P-2 in the margin it would show that the information was received by the Additional Superintendent of Police, Raipur from one Heeral Lal Lakra (PW-5). Subsequent document which is proved by Shankar Chandrakar (PW-11) is marked as Ex. P-3, wherein reasons were recorded that in case the process to obtain warrant is followed then in such case the accused may flee away. Such urgency was recorded into writing and was sent to Additional Superintend of Police, Raipur. Perusal of such information at the margin of Ex. P-3 the acknowledgement of receipt of information is marked. Further Heeral Lal Lakra (PW-5) has

deposed that the copy of Ex. P-2 & P-3 were given to Superintendent of Police, Rail, Raipur. This witness has not been cross-examined, therefore, statement of Heeral Lal Lakra (PW-5) remains unrebutted with respect to the compliance of Section 42 of the N.D.P.S. Act.

7. Further the statement of Shankar Chandrakar (PW-11) would show that a notice was given to the appellant under Section 50 of the N.D.P.S. Act and he was informed about the fact that he is free to get himself examined by any Gazetted Officer and if he gives consent then he may be searched by the police officers. The said notice was given by Ex. P-4. Consequent to Ex. P-4 the consent was given by accused and was reduced into writing, which bears the signature of the witness and thereafter search panchnama was prepared vide Ex. P-6. On search having been made from three of the bags different packets in number of 7, 6 & 3 were recovered. Which on having been weighed found to be of total 16 K.G., thereafter, Weighment Panchnama (Ex. P-7) was prepared. The witness and the document would show that from all the bags samples were taken out and seizure memo was prepared vide Ex. P-8. Perusal of Ex. P-8 would show that it bears the seal of GRP and particulars of bag and packets has also been mentioned.
8. Subsequent there to, the appellant was arrested and FIR was registered vide Ex. P-17. Perusal of Ex. P-17 would show that on 24.06.2014 the same was registered and seized materials were deposited in Malkhana and were handed over to Dharam

Raj Dhruv (PW-9).

9. Dharam Raj Dhruv (PW-9) has deposed that he was working as Malmoharrir in GRP and he has proved this fact that 7, 6 & 3 packets of 16 K.G. were deposited and out of that 50 G.M. of cannabis samples were taken out, which was marked as articles A1, A2 & A3. The register has been proved as Ex. P-14 and the photocopy is Ex. P-14/C.
10. On 25.06.2014 vide Ex. P-21 a letter was communicated to the Superintendent of Police, Rail Police, Raipur. Perusal of Ex. P-21 would show that it was addressed to Superintendent of Police, Rail, Raipur and request was made to send the samples for the FSL. The samples were thereafter carried by Suresh Kumar Mishra (PW-2) and he has deposed before the Court that on 25.06.2014 the samples which were marked as A1, A2 & A3 were received by him so as to deposit the same with the FSL. Thereafter, the samples were deposited in FSL Lab and document is marked as Ex. P-11. Perusal of Ex. P-11 would show that it is dated 25.06.2014 and affirms the receipt of articles. Thereafter, on 27.06.2014 the report of FSL was received vide Ex. P-23. Perusal of Ex. P-23 would show that the report is marked as Ex. P-24, which affirms the fact that the articles A1, A2 & A3 were cannabis.
11. Though in this case the independent witnesses have not categorically supported the case of the prosecution, but if statement of I.O. Shankar Chandrakar (PW-11) is read along with the other witnesses and the document, it would show that no discrepancy has come to fore to rebutt the evidence. The

Supreme Court in the case of ***Kashmiri Lal Vs. State of Haryana {2013 CRI. L.J. 3036}*** has laid down that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion.

12. Applying the aforesaid principle in this case and reading statement of Shankar Chandrakar (PW-11) along with other witnesses and document, it appears that the prosecution was able to prove the fact that the appellant was in possession of cannabis of 16 K.G. and accordingly was convicted under Section 20 (b) (ii) (B) of the N.D.P.S. Act and the same is well merited, which do not call for any interference. Now with respect to the sentence, the appellant is in jail since 24.06.2014 as such has suffered almost 3 years, 7 months & 25 days of jail sentence out of 5 years.

13. Taking into the totality of the facts and the quantity of cannabis, this Court is of the opinion that his conviction under Section 20 (b) (ii) (B) of the N.D.P.S. Act is affirmed but his jail sentence is reduced to that of already undergone by him. Sentence of fine of Rs.50,000/- is also reduced to Rs.35,000/- and in absence of payment of fine the original jail sentence shall remain as it is. The appellant is in jail. The appellant be released forthwith, if the fine is deposited in total.

14. With such observation, the appeal is partly allowed.

Sd/-
Goutam Bhaduri
Judge