

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 15-2-2019****Delivered on 15-03-2019****CRA No. 937 of 2011**

- Raju Shrivastava s/o. Shyam Shrivastava, aged 21 years r/o. Boisar, Police Station Bisar, District Thane, Mumbai (Maharashtra).

---- Appellant**Versus**

- State of Chhattisgarh through District Magistrate, District Mahasamund (CG).

---- Respondent

For Appellant : Mr. Mahendra Dubey, Advocate.
 For respondent/State : Mr. Raghavendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-11-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Mahasamund, District Mahasamund (CG) in Special Criminal Case No.10/2011, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for eight years and to pay fine of Rs.80,000/- with default stipulations.

2. As per version of prosecution, on 13-03-2011 Bhagwat Thakur Asst. Sub Inspector of Police Station Saraipali received information from Mukhbir that one person was looking for a customer for selling contraband/Ganja keeping in a suit case near Tehsil Officer, Saraipali. The said Information was recorded and two independent witnesses were called. The information was sent to higher authorities, thereafter the Police Officer rushed to the spot along with independent witnesses and police personnel and 17 kgs of contraband article was seized from the appellant. The matter was reported and after completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) All the independent witnesses have not supported the version of the prosecution and the documents exhibited by the trial Court are suspicious in nature.
- ii) Mandatory provisions of the Act, 1985 have not been complied with by the authorities, therefore, finding of the trial Court is not liable to be sustained.
- iii) Investigating Officer Bhagwat Thakur (PW/2) who was complainant in the present case has investigated the matter and on this count finding of the trial Court is liable

to be reversed.

- iv) The evidence adduced by the prosecution is not being capable of inspiring the confidence of the court for bringing home the charge, therefore, finding of the trial Court is liable to be reversed.

Reliance has been placed in the matter of **State of Orissa vs. A. Rajeswar Patra, (2004)10 SCC 557, Mohanlal Vs. State of Punjab, 2018(3) CGSC 1568 (SC), Tula Ram vs. State of CG 2013 (1) CGLRW 245 and Hiranman Nayak vs. State of CG decided by this court on 23-1-2019 in CRA No. 543 of 2013.**

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Asst. Sub Inspector of Police Station, Saraipali namely Bhagwat Thakur (PW/2) deposed before the trial Court that he received information from Mukhbir and reduced it in writing in

Rojnamcha Sanha. As per version of this witness, the information recorded by him was sent to Sub Divisional Officer (Police) Mahasamund and it was sent through constable Rajendra Vyavahar (PW/9) and it is recorded in Rojnamcha Sanha. Punch witnesses have been called and thereafter rushed to the spot with police personnel and independent witnesses. He gave notice in writing to the appellant under Section 50 of the Act, 1985 that he is entitled to be searched by Gazetted Officer or by Magistrate, but he opted to be searched by this Police Officer. First all the police personnel and independent witnesses were searched and no objectionable articles were found in their possession. Thereafter, suit case of the appellant was searched in which contraband article was found. One weighing machine was called and it was checked and after weighing seized article was found to be 17 kgs. Two samples of 25 grams each were separated from seized article and articles and samples were sealed and seizure memo was prepared and thereafter seized articles were handed over to Incharge of Malkhana who kept the same in Malkhana and gave him acknowledgement as per Ex.P/16. He further deposed that information regarding seizure was sent to Superintendent of Police, Mahasamund as per Ex.P/20 and acknowledgement was received which was submitted in the Police Station. Version of

this witness is supported by version of Constable PW/9 Rajendra Kumar Vyavahar.

7. As per version of all the witnesses, seized article was handed over to PW/8 Neelambar Netam, Head Constable who is Incharge of Malkhana of the Police Station, Saraipali. As per version of this witness, he received acknowledgement about depositing the same in Malkhana. As per his version, he kept the seized article safely in Malkhana of Police Station and entry to that effect was also made in Malkhana register. From the evidence of Asst. Sub Inspector Bhagwat Thakur (PW/2), it is established that information was sent to Sub Divisional Officer (Police) Saraipali and again information regarding search and seizure was also sent to Sub Divisional Officer (Police) Saraipali as per Ex.P/20. From the evidence of Constable Siraj Ahmed (PW/6), it is also clear that he deposited the sealed packets of seized article in FSL and acknowledgement as per Ex.P/23 was brought by him and submitted the same in Police Station Saraipali. As per report of FSL (Ex.P/24) test of Ganja was found positive. Though PW/10 Manoj Kumar and PW/7 Sunil Kumar Agrawal did not support the factum of seizure, but the fact remains that if they were not present at the time of seizure they are not real witnesses of the incident and if they suppressed the fact even after their presence on the spot, their version is not

reliable. Version of the Police Officer cannot be discarded merely because he is a Police Officer. Version of Asst. Sub Inspector Bhagwat Thakur (PW/2) is supported by version of PW/3 Nand Kumar Das, PW/4 Ghanshyam, PW/5 R.R. Yadav, PW/6 Siraj Ahmed and PW/8 Neelambar Singh Netam, Head Constable and PW/9 Rajendra Vyavahar. The trial Court has elaborately discussed the entire evidence and recorded finding that quantity of Ganja is neither commercial nor small quantity.

8. From the evidence it is established that information was sent to higher authorities. Though it is not a case of personal search, notice was given to the appellant as per provisions of Section 50 of the Act, 1985. Seized article was sent to Incharge of Malkhana as per provisions of Section 55 of the Act, 1985. Information regarding arrest and seizure was sent to Sub Divisional Officer (Police) as per Section 57 of the Act, 1985. Therefore, argument advanced on behalf of the appellant that the mandatory provisions of the Act, 1985 have not been complied with, is not sustainable. Again, there is no material contradiction regarding seizure in the statement of the prosecution witnesses. It is further clear from the evidence that the seized article was sent to FSL for examination and report thereof was received in which test of Ganja was found positive. Bhagwat Thakur (PW/2) Asst. Sub Inspector of Police though lodged FIR in the present case, but he did not investigate

the matter after proceeding of search and seizure. Whatever is done by him is done during search and seizure, therefore, it cannot be said that the said Police Officer has investigated the matter after registration of FIR. From the order sheet dated 28-4-2011 it appears that property seized in the present case was submitted before the Court. On over-all assessment, argument advanced on behalf of the appellant on this count is not sustainable. Case laws cited by learned counsel for the appellant do not help to him as the same is distinguishable from the facts of the present case.

9. All the witnesses have deposed in affirmative regarding seizure of contraband article Ganja from the possession of the appellant. There is no material contradiction which warrants interference by this court to the judgment of conviction. Illegal possession of quantity of Ganja is 17 kgs which is neither small quantity nor commercial quantity, therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(b) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed. Sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable.

10.. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(RAM PRASANNA SHARMA)

Judge

Raju