

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 961 of 2001**

1. Somaru Ram Son of Lakhamu Ram, aged 50 years, resident of village Dogaripara Timnar, P.S. Narayanpur District Bastar (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Narayanpur, District Bastar (C.G.)

---- Respondent

For Appellant	:	Shri Subhash Yadav, Advocate and Shri Tarun Dansena, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****14/11/2019**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 11/09/2001 passed by Special Judge, (N.D.P.S. Act) Bastar, Place Jagdalpur in Special Case No.19/2001; whereby the appellant Somaru Ram stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act")	R.I. for 3 years and 6 months & fine of Rs. 8,000/- in default of fine additional R.I. for 1 year.

- 2) Case of the prosecution in brief is that on 30/03/2001 Sub Inspector Rajesh Kumar Dubey of Police Station Narayanpur received a secret information that two persons with Ganja are travelling in a Bus going from Kondagaon to Pratappur. After recording the said information in the Rojnamchasanha he apprehended Nayan Kumar and Kishan and on interrogation they disclosed that they have brought Ganja from Samaru Ram

and Ramlal of village Timnar. On this Rajesh Kumar Dubey, Sub Inspector alongwith Police staff went to village Timnar after recording the departure in the Rojnamchasanha to the effect. Notice (Ex. P-1) under section 50 of the Act was given to the accused before search of his house that he may get the search through Gazetted Officer or the Magistrate or by him (Rajesh Kumar Dubey). The accused consented for search by the Police vide Ex. P-3. Thereafter, Rajesh Kumar Dubey, Sub Inspector gave search of himself and the Police Staff by the accused by Ex. P-4. After search of the house of the accused, 35 KG Ganja was recovered vide Ex. P-5. Identification Memo of the Ganja was prepared vide Ex. P-7. Out of the said Ganja 2 samples of 80 grams were drawn and sealed. The seized Contraband was deposited in Malkhana through Head Constable Chitram Thakur and acknowledgement was obtained vide Ex. P-16. The accused was arrested, FIR Ex. P-13 was registered under Crime No. 40/2001 and the information regarding the entire proceedings was forwarded to the Special Court, Jagdalpur and CSP, Jagdalpur the samples were sent for Chemical Examination to FSL Raipur from where report Ex. P-24 was received confirming the Contraband to be Ganja. After completion of investigation charge sheet was filed against the accused/appellant under section 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act.

- 3) The Trial Court framed charge against the accused/appellant under section 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act. The accused/appellant denied the charge and prayed for trial.
- 4) The prosecution in support of its case examined as many as 05 witnesses namely PW-01 Rajuram Baide, PW-02 Sukhdev, PW-03 Motiram, PW-04 Chitram Thakur (Head Constable) and PW-05 Rajesh Kumar Dubey (I.O.). The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

No Defence witness was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that there is total non-compliance of mandatory provisions of Sections 42 & 50 of NDPS Act. The Ganja was seized by Investigating Officer from house of the appellant/accused but no weighing Panchnama was prepared on the spot and it was weighed at Police Station as mentioned in the Panchnama, therefore, it is a case of manipulation and the appellant has been falsely implicated in this case. All the independent witnesses have turned hostile and not supported the prosecution case. Only on the basis of evidence of the Investigating Officer who was interested in the case, conviction of the accused cannot be sustained.
- 7) He submits that as per Ex. P-8 i.e. weighing Panchnama out of total 34.5 KG Ganja seized from the accused/appellant, 2 samples each of 80 grams were drawn and marked as Articles A1 and A2 and as per Ex. P-9 the same were sealed by the Police. However, as per Ex. P-16 i.e. acknowledgement of deposit of the Contraband in the Malkhana, it is mentioned that 6 packets each weighing 100 Gram were sealed and deposited in the Malkhana likewise as per Ex. P17C 6 packets each 100 grams were deposited in the Malkhana. Therefore, the prosecution case becomes doubtful as there is material discrepancy in the quantity of the Contraband of the samples drawn and deposited in the Malkhana.
- 8) Lastly he submits that this act was committed on 30/03/2001 and new amendment is incorporated on 02/10/2001, therefore, the old Act proviso is applicable in this case and accused has already spent more than 1 year 9 months and maximum punishment is 5 years, therefore, he may be sentenced to the

period already undergone by him.

- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) It is not disputed by the appellant and the respondent counsel that as per FSL report Ex. P-25 the articles sent for chemical analysis were found to be Ganja.
- 12) It is also not disputed by the respondent/State counsel that PW-01 and PW-02 both have turned hostile and not supported the prosecution at any stage of examination.
- 13) The conviction is based on the evidence of PW-05 Rajesh Kumar Dubey I.O. and PW-04 Chitaram Thakur, who was Mohrir in the P.S. Narayanpur and received articles for keeping in safe custody of Police Station.
- 14) As per PW-05 Rajesh Kuamr Dubey when he received information from informer that one bus was coming from Kondagaon to Pratappur near Benur to Narayanpur and 2 persons were carrying Ganja in the Bus, he recorded the same in the Rojnamchasanha and thereafter he went for search of those 2 persons carrying Ganja in Bus alongwith his staff and 2 independent witnesses. When inquired from Nayan Kumar and Kishan who were arrested with Ganja they informed that accused has a large quantity of Ganja in his home. Thereafter, immediately he reached along with his staff to village Timnar and as per Ex. P-1 notice was given to the accused for search and after the consent of accused Somaru Ram as per Ex. P-3 search of his home was made vide Ex. P-2 and approximate 35 KG Ganja was recovered. As per Ex. P-5 search inquest is prepared

and as per Ex. P-6 no any weighing instrument was available on spot, therefore, the seized article was brought to Police Station and as per Ex. P-8 at Police Station in presence of the accused and independent witnesses, Ganja was weighed and found to be 34.5 KG out of which 2 samples were drawn and marked as Articles A1 and A2. As per Ex. P-9 and Ex. P-10 the articles were sealed and specimen seal Panchnama was prepared.

- 15) As per Ex. P-11 the seizure is prepared and the accused was arrested as per Ex. P-12. The article was sent for keeping in safe custody of Police as per Malkhana Register Ex. P-16 and Ex. P-17. FIR lodged as per Ex. P-18 and article sent for FSL examination vide Ex. P-23. As per Ex. P-25 FSL report sent article was found Ganja. Looking to the fact that search made in the house of the accused/appellant compliance of Section 50 of NDPS Act is not required. Proviso of Section 50 is not applicable in case where the search is made in the house of accused, it is not a personal or individual search, therefore, compliance of Section 50 was not applicable in this case. Though in the case notice under Section 50 was also given by the I.O as per Ex. P-1 to the accused Somaru Ram and after consent as per Ex. P-2 and Ex. P-3 the search was made in the house of the accused person.
- 16) Definitely the independent witnesses of village have turned hostile and not supported the prosecution case but they admitted their signature on document Ex. P-1 to Ex. P-12 and PW-02 Sukhdev also admitted the signature on Ex. P-1 to Ex. P-12. Looking to the evidence of PW-05 Rajesh Kumar Dubey there is no reason to disbelieve this Investigating Officer. The defence counsel has not brought on record anything to show that the Investigating Officer was having any ill will or enmity with the accused/appellant for his false implication in this case. During cross-examination of the witnesses also no such suggestion has been put to them that the Investigating Officer was inimical to the accused/appellant.

- 17) It is well settled principle of law that a Police Officer can or cannot be a sole eye witness in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a Police Officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a Police Officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.
- 18) Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the Police Officer is found to be reliable and trustworthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the Police Officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the Department of Police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. ***[AIR 2013 Supreme Court 3344, Pramod Kumar V. State (GNCT) of Delhi.]***
- 19) The Trial Court has discussed in detail about the compliance of the mandatory provisions by the Investigating Officer from Paras 34 to 38 of the impugned judgment. Thus considering the oral and documentary evidence on record the seizure of Contraband Ganja from the possession of the accused /appellant which was subsequently found to be Ganja as per FSL report vide Ex. P-25, this Court is of the opinion that the Trial Court was fully justified in convicting the appellant under Section 20(b)(1) of NDPS Act.

- 20) In this case the offence was committed on 30/03/2001 i.e prior to amendment in the Act which was incorporated on 02/10/2001 and therefore, the old Act would be applicable where no minimum sentence is prescribed for the above offence. Since the appellant has already remained in jail for 1 year and 9 months, considering the facts and circumstances of the case, the age of the appellant at the relevant time i.e. 50 years and at present he must be 68 years this court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine amount with default stipulation as imposed by the Trial Court intact.
- 21) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under section 20(b)(1) of NDPS Act, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs. 8,000/- with default stipulation imposed by the Trial Court shall remain intact.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant