

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 05.04.2019

Pronounced on 15.04.2019

CRIMINAL APPEAL No. 106/2008

(Arising out of judgment of conviction and order of sentence dated 02.11.2007 passed by the Special Judge, (constituted under NDPS Act), Janjgir Champa, C.G. in Special Criminal Case No. 17/2006)

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Devdas @ Ghargodiya, S/o. Chandandas, aged about 61 years, R/o. Village Bada – Dabhara, PS Dabhara, Distt. Janjgir (CG)

Versus

State of Chhattisgarh through PS Dabhara, Distt. Janjgir Champa (CG)

For appellant : Shri F.S. Khare, Adv.

For Respondent/State : Shri Washim Miyan, Panel Lawyer.

Hon'ble Mr. Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 02.11.2007 passed by the Special Judge, (constituted under NDPS Act), Janjgir Champa, C.G. in Special Criminal Case No. 17/2006 whereby and whereunder he convicted and sentenced the appellant as under:-

Sr. No.	Offence u/S.	Sentence	In default of payment of fine
1.	20 (b) (ii) (C) of the NDPS Act	RI for 10 years and fine of Rs. 1,00,000/-	RI for 3 years

2. In brief the prosecution story is that P.W. 8 K.S. Rathia was posted as SHO, PS Dabhra on 31-1-2016. He received an information from informant that appellant sells cannabis. On receiving such information he prepared panchnama regarding information. After completing some formalities he seized 26.800 cannabis from possession of the appellant. He took out 8 samples out of the seized cannabis. Samples were sent to RFSL and report was obtained. After completing remaining formalities, a charge sheet was filed against him. The trial Court framed charge against him under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act'). After completion of trial, trial Court convicted and

sentenced him as aforesaid.

3. Counsel for the appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

4. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.

5. As per the alleged panchnama Ex. P-12, P.W. 8 K.S. Rathiya had prepared panchnama regarding information received from informant and sent a copy of it to SDO, Police, Sakti.

6. As per alleged document Ex P-23, P.W. 8 K.S. Rathiya had written to SDO Police, Sakti and requested him to reach to the spot and initiate proceeding.

7. As per alleged document Ex. P-24, P.W. 8 K.S. Rathiya proceeded to search because there was apprehension that delay may be caused in obtaining search warrant and appellant may abscond or conceal the cannabis.

8. As per alleged seizure Ex. P-19 and Ex. P-20, from the house of appellant 26.800 kg cannabis was seized, out of which 8 samples were taken out.

9. As per the alleged document Ex. D-1, P.W. 8 K.S. Rathiya had sent the report of entire proceedings to SDO Police, Sakti.

10. As per the alleged copy of Malkhana register Ex. P-7-C, 26.800 kg cannabis and 8 samples of cannabis were deposited in Malkhana of police station Dabhra.

11. As per alleged RFSL report Ex. P-5, cannabis was found in sent samples.

12. There is no such evidence on record on strength of which it can be said that Ex. P-12, Ex. P-23, Ex. P-24, Ex. P-19, Ex. P-20, Ex. D-1, Ex. P-7-C and Ex. P-5 are not simple, not natural and not normal. Thus, this court disbelieves the statement D.W. 1 Heeradhar Patel in the reference that appellant had not committed any offence.

13. Looking to the above mentioned facts and circumstances of the

case, this court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 20(b)(ii)(C) of the NDPS Act against the appellant.

14. After appreciation of the evidence discussed herebefore, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed.

15. The appeal is accordingly dismissed. The conviction and sentence of the appellant are hereby affirmed.

16. As per the report received from the Central Jail, Bilaspur, dated 4-2-2019 the appellant has served the entire sentence including the fine sentence and has been released on 31-1-2019. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge