

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17.06.2019

Judgment delivered on 07.8.2019

CRA No. 664 of 2009

1. Abdul Razzak, s/o Abdul Gani, aged about 42 years, Occupation – Rickshaw Puller, R/o Station Para, Rajnandgaon, District Rajnandgaon, CG

--- Appellant

Versus

1. State of Chhattisgarh through Police Station Kanker, District Kanker, CG

--- Respondent

For Appellant	-	Shri Brijesh Singh, Advocate.
For Respondent/State	-	Shri Himanhu Sharma, PL

CAV Judgment

Vimla Singh Kapoor, J

According to the FIR (Ex.P-1) registered on the basis of *Dehati Nalishi*, the investigating officer namely Alexender Kiro (PW-11) had received a secret information to the effect that on 23.09.2008 the accused/appellant herein and accused Abdul Jaleel (acquitted by the judgment impugned dated 02.09.2009) were carrying Ganja on a motorcycle bearing registration No. CG-08-F-3822 towards Kanker. On receiving the said information, he made an entry thereof in the *Rojnamcha Sanha*, instructed the constable namely Anil Chandravanshi (PW-2) to intimate the Gazetted Officer about the same and then reach the spot. Thereafter, PW-11 along with

his associates also rushed to the spot, stopped the bike borne accused/appellant and the acquitted accused and found a black colour bag containing some Ganja like substance. It is relevant to mention here that the acquitted accused was riding the motorcycle whereas the accused/appellant herein was occupying the pillion seat carrying the bag containing the contraband. Since the SDO (P) was not present in the headquarters, the entry in respect of non availability of search warrant was made and the notice under Section 50 of the NDPS Act (Ex.P-9) was given to the accused/appellant. Police people, after giving their own search, made the search of the accused/appellant with his consent under *Panchnama* Ex. P-9 and P-10. On examination of the said substance by sniffing, tasting and burning it appeared to be like Ganja which on weighment being done after physical verification of the weighing instruments was found to be 9 Kg. Two samples of 50 gram each marked as Articles A-1 and A-2 were drawn and after being sealed they were sent to the Laboratory for chemical examination under Ex. P-4. Seizure of the contraband was made from the accused/appellant herein whereas that of the motorcycle used for carrying the same was effected from the acquitted accused in presence of the witnesses. The report (Ex.P-5) received from the laboratory says that the articles A-1 and A-2 contained Ganja. Even the seal put on those articles, according to the FSL report Ex. P-5, was found to be intact. Seizure of contraband was made under Ex. P-19 and that of the motorcycle used for commission of crime was made under Ex. P-20. After completion of the procedural formalities required under the NDPS Act, *challan*

was filed against the accused/appellant and the acquitted accused under Section 20 (B) of the NDPS Act followed by framing of charge accordingly.

2. On the basis of material on record and the evidence of the witnesses learned Court below acquitted the accused - Abdul Jaleel of the charge levelled against him but convicted the accused appellant herein under Section 20(B) (ii) (B) of the NDPS Act and sentenced him to undergo RI for 5 years and pay fine of Rs.10,000/- plus default stipulation.

3. Counsel for the accused/appellant submits that the Court below has erred in law in holding the accused/appellant guilty under Section 20(B) (ii) (B) of the NDPS Act as the independent witnesses PW-4, PW-5 and PW-6 have not supported the case of the prosecution. He further submits that the procedure prescribed under Sections 42 and 50 of the NDPS Act has not been followed properly while holding the accused/appellant guilty as mentioned above. According to him, when the co-accused has been acquitted on the same set of evidence, the present appellant was also required to be dealt with accordingly. It is submitted that as the judgment impugned is replete with enumerable infirmities and illegalities, it cannot be sustained under the law.

4. State counsel however supports the judgment impugned and submits that all the procedural formalities contained in the NDPS Act have been strictly taken care of by the prosecution, and so also the Court below has appreciated the evidence on record with

utmost circumspection, the judgment impugned is not required to be interfered with.

5. Madhuri Nayak (PW-1) is the witness who registered the FIR (Ex.P-1) on the basis of *Dehati Nalishi* handed over to her by the Sub Inspector (PW-11) and thus supported the case of the prosecution. Likewise, constable Anil Chandravanshi (PW-2) who went to give intimation to the SDO (P) regarding the incident and obtained acknowledgment thereof (Ex.P-2) has also supported the case of the prosecution stating that at the relevant time the concerned officer was not available in the headquarters and therefore, he handed over the intimation to his reader. Apart from these witnesses who happen to be from the Police Department, there are 3 independent witnesses also, being Rajesh Thakur (PW-4), Mannalal Thakur (PW-5) and Niranjana (PW-6) and they all have admitted their signatures on all the documents prepared during search and seizure of the contraband though they have taken a somersault from the procedural obligations carried out before them. Of course, PW-4, PW-5 and PW-6 have stated that no physical verification of the weighing instruments or the other procedural formalities required to be carried out such as search, seizure, examination of the contraband or homogenization of the contraband was done in their presence yet the admission of their signature on all the documents pertaining thereto is indicative of the fact that they were present on the spot at the relevant time. If it is taken for a moment that the Police people had obtained their signatures on those documents perforce, it was open for them to make a complaint to the highly placed officers about the same but

in this case there is nothing on record like this. Furthermore, the chemical examination report (Ex.P-5) received from the laboratory clearly demonstrates that the articles marked as A-1 and A-2 contained Ganja. The evidence categorically shows that the Ganja which on weighment came out to be 9 Kg which is termed as below the commercial quantity but above the small quantity, was seized from the accused/appellant herein under Ex.P-19 who was sitting on the bike as a pillion rider carrying a black colour bag which contained the same. The other accused who has been acquitted by the Court below was however just riding the said motorcycle and cannot be supposed to know as to what was being held by the accused/appellant herein. The exclusive possession over the said contraband was undisputedly with the accused/appellant herein. The investigating officer (PW -11) has also fully supported the case of the prosecution detailing the manner in which the accused/appellant was nabbed, search operation was made, seizure followed, weighment proceedings were undertaken, samples were drawn and sealed, contraband was sent to the laboratory for being chemically examined etc. and there does not appear any exaggeration in his deposition.

6. Thus the aforesaid factual analysis leads to one and the only irresistible conclusion that the accused/appellant was found in exclusive possession of 9 Kg of Ganja without any valid licence permitting him to do so. All the witnesses had been quite consistent in deposing before the Court, and so also the procedural formalities required to be followed under the NDPS Act have also been taken care of to the fullest possible extent. The Court below

has based its conclusion of holding the accused/appellant guilty and imposing the sentence as described above on the proper appreciation of the material collected by the prosecution and the evidence so adduced by it. No illegality comes to the fore warranting dislodgement of the well written findings of the Court below. Being all this, the judgment impugned deserves affirmation by dismissing the appeal. It is done so.

7. As the appellant is already in jail consequent to order dated 13.02.2019 cancelling the bail granted to him earlier, no order to send him jail etc. is needed to be passed.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi