

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 205 of 2011**

- Smt.Suprabha w/o. Surendra Sahu, aged about 30 years, r/o. Barhampur, District Ganjam (Orissa).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Durg, District Durg (CG).

---- Respondent

For Appellant : Mr. Shrawan Agrawal, Advocate.
 For respondent/State : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****2-1-2019**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 21-1-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Durg, District Durg in Special Case No. 21 of 2010 wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced her to undergo rigorous imprisonment for six years and to pay fine of Rs.20,000/- with default stipulations.

2. As per prosecution case, 7-8-2010 at about 4.00 pm, Town Inspector of Police Station Durg namely M. N. Banthi (PW/8) received confidential information from Mukhbir that one lady is

having contraband article Ganja in her possession and standing near new Bus-stand, Durg. He recorded the said information as per Ex.P/1 and same was sent to superior officer i.e., City Superintendent of Police, Durg. This information was sent through constable Rajkumar (PW/9) as per Ex.P/21. He further called two independent witnesses and information is recorded in Rojnamcha Sanha of the said Police Station. Thereafter he rushed to the spot and informed the appellant of her right to be searched by any Gazetted Officer or Magistrate, but she opted to be searched by the said Police Officer and on search three packets of contraband articles were seized and two samples were prepared from each packet which were sent to FSL and test of Ganja was found positive. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

- i) One translator is appointed to translate the words spoken by the appellant because appellant is not having knowledge of Hindi but he is having knowledge of Oriya language but record is not maintained in Oriya language and it is maintained in Hindi language, therefore, case of the prosecution becomes doubtful.
- ii PW/1 Shiek Kalim and PW/2 Dinesh Kumar Dheemar have not supported the version of prosecution and from their evidence seizure

of contraband article Ganja is not established.

- iii) Again, PW/3 Mohd. Kalim has not supported the version of prosecution regarding weight of the seized article, therefore, story put-forth by the prosecution is not substantiated by evidence of this witness.
- iv) Mandatory provisions of the Act, 1985 have not been complied with, therefore, finding arrived at by the trial Court is liable to be set aside.

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. As per version of Town Inspector of Police Station, M.N. Banthi (PW/8), on 7-8-2010 he received telephonic information regarding illegal possession of contraband article Ganja by the appellant near new Bus Stand, Durg which was recorded by him as per Ex.P/1 and same was sent to City Superintendent of Police on the same day as per Ex.P./21. He further deposed that he called two independent witnesses and proceeding of information was

recorded in Rojnamcha Sanha and thereafter he rushed to the spot where right of the appellant was informed to her regarding search by Gazetted Officer or by Magistrate but she opted to be searched by this Police Officer. In the present case, article was not found from the body of the appellant, but it was found in three bags which were possessed by the present appellant. It is not a case of personal search, therefore, Section 50 of the Act, 1985 is not applicable in the present case. As per version of this witness, seized articles were weighed and it was found to be 16 kgs and 48 grams. Two samples were separated from each packet and sealed and rest of the article was also sealed. Seized articles were handed over to Incharge of Malkhana, who kept the same in safe custody. As per version of Sankar Prajapati (PW/4) Asst. Sub Inspector, he was Incharge of Malkhana where three plastic packets were handed over to him for safe custody with six samples and he deposited the same in Malkhana and made entry to that effect as per Ex.P/17 in register. Again samples were withdrawn from the said Malkhana for examination to FSL.

7. Constable Ramjeevan Pandey (PW/5) deposed that he took three sealed packets for depositing the same in FSL and deposited the same on the same day in FSL, Raipur and received acknowledgement thereof. Version of all these witnesses is subjected to searching cross examination, but nothing could be elicited in favour of defence. Report of FSL was received as per

Ex.P/24 in which test of Ganja was found positive. As samples were kept in safe custody, provision of Section 55 of the Act, 1985 has been complied with. Again, information was sent to Superintendent of Police who prepared a draft for sending the sample to FSL. In that way, provision of Section 57 of the Act, 1985 has also been complied with. Town Inspector M.N. Banthi (PW/8) deposed (para 20) that the appellant has knowledge of Hindi, therefore, it cannot be said that he is not aware of the Hindi language and known only Oriya language.

8. PW/9 Constable Rajkumar is a person who passed the information sent by Inspector M.N. Banthi to City Superintendent of Police and he corroborated the version of the said Police Officer. FIR was recorded on the basis of independent informer and as per charge-sheet the property seized in the present case was forwarded to the Court.

9. Looking to the entire evidence, it is established all the mandatory provisions of the Act, 1985 have been complied with and argument advanced on behalf of the appellant is not sustainable. Illegal possession of quantity of Ganja is 16 kgs and 48 grams 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.

10. Accordingly, the appeal is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term, therefore, no further order for her arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju