

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25-1-2019****Delivered on 08-03-2019****CRA No. 53 of 2010**

- Durgesh Sweeper s/o. Surendra, aged about 24 years, r/o. Village Sanjay Nagar, Akaltara, PS Akaltara, District Janjgir-Chhampa (CG).

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Akaltara, District Janjgir-Champa (CG).

---- Respondent

For Appellant : Mr. Bharat Rajput, Advocate appears
as Amicus Curiae

For respondent/State : Mr. V.B. Singh, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 27-7-2009 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") District Janjgir Champa (CG) in Special Case No. 5 of 2009, 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 seven years and to pay fine of Rs.5000/- with default stipulations.

2. As per prosecution case, on 23-2-2009 Asst. Sub Inspector namely Ravichand Sai Paikra (PW/8) received

confidential information from Mukhbir that one person is transporting contraband article Ganja in bag and is waiting for some other person at Baloda Bus Stand in front of Samrat hotel. He recorded the same in Panchnama and information was sent to superior officer. Two independent witnesses were called through notice and thereafter police personnel and other witnesses reached to the appellant where he was standing in front of Samrat hotel in possession of 5 kgs of Ganja which was seized. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) The trial court overlooked the provisions of Sections 42(2), 50, 55 and 57 of the Act, 1985 flouted, therefore, conviction of the appellant is not proper.
- ii The trial Court has not considered the deposition of all the prosecution witnesses while passing the judgment.
- iii) The finding of the trial Court is improper and incorrect and same is not liable to be sustained.

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 Asst. Sub Inspector of Police Station, Ravichand Sai Paikra (PW/8), on 23-2-2009 he received information that one person is having contraband article Ganja in bag and waiting for some other person and after receiving the said information he recorded the same in Rojnamcha as per Ex.P/3. As per version of Gouri Shankar Baghel, Constable No. 163 (PW/1), the said information was sent to Sub Divisional Officer (Police), Janjgir, who submitted the same in the said office and received acknowledgement. As per version of Asst. Sub Inspector Ravichand Sai Paikra (PW/8) the appellant opted to be searched by him. Thereafter, he searched the bag of the appellant in which contraband article Ganja was found and same was weighed and found to be 5 kgs. Two samples of 25 grams each were separated, seizure was prepared and same was handed over to Incharge of Malkhana. Head Constable No.137,Vyas Narayan Dubey (PW/2) deposed that information regarding seizure was sent to Sub Divisional Officer (Police) and acknowledgement was received vide Ex.P/7. Constable No. 344 Teekaam (PW/3)

deposed that he went to village Katora for collecting physical balance for weighing the seized article. Version of Asst. Sub Inspector (PW/8) is supported by version of PW/4 Murlidhar. Head Constable Manik Ram (PW/6) deposed that the seized articles were kept in safe custody of Malkhana as per Ex.P/32 and it was registered in the said Malkhana as per Ex.P/33. Head Constable Holiram Bhargav (PW/7) deposed that he received information as per ExP/3, P/4, P/5 and P/8 in the office of Sub Divisional Officer (Police) Janjgir. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the defence. Constable Vimal Ram (PW/5) took the samples and submitted in FSL and acknowledgement receipt thereof (Ex.P/24) submitted in Police Station and report of laboratory was received as per Ex.48 in which test of Ganja was found positive.

7. 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). 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. It is also proved by the evidence of Asst. Sub Inspector that the said bag was in exclusive possession of the appellant in which contraband article Ganja was found. Argument advanced on behalf of the appellant on this count is not sustainable.

8. Illegal possession of quantity of Ganja is 5 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. Sentence part is also not liable to be interfered with.

9. 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

