

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.790 of 2017

Judgment Reserved on : 11.7.2019

Judgment Delivered on : 1.10.2019

Sanjeet Kumar Singh @ Munna Kumar Singh, S/o Brijbhushan Singh, aged about 33 years, R/o Village Taitarpur, P.S. Khijatarai, District Gaya (Bihar), Present Address Qtr.No.B-5/87, Kabir Nagar, Raipur, District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

For Appellant : Shri Vivek Tripathi, Advocate
For Respondent/State : Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 10.5.2017 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act'), Bilaspur in Special NDPS Case No.209 of 2014, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(C) of the Act	Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/- with default stipulation

2. Facts of the case, in brief, are that on 31.5.2014 at about 8:00 p.m., Station House Officer N.L. Dhritlahre (PW7) received a secret information that a person, namely, Munna Kumar Singh alias

Sanjeet Kumar Singh and his friend Reena Das alias Manali Das were carrying Ganja in the dickey of a car bearing registration No.CG 04 HA 4850 and were travelling in the car from Raipur to Pendra Road. He recorded this information in Rojnamcha Sanha (Ex.P12), prepared Mukhbir Suchana Panchnama (Ex.P13) and in compliance with the provision contained in Section 42 of the Act forwarded the said information to the higher officer and without obtaining a warrant proceeded towards the spot along with staff. He stopped the said car. The Appellant and Reena Das were present in the car. The car was being driven by the Appellant. He gave a notice under Section 50 of the Act to both the Appellant and Reena Das. Both of them consented to be searched by the police officer (Investigating Officer N.L. Dhritlahre). Thereafter, on being searched, 47.370 Kgs. of Ganja kept in 3 bags were found in the dickey of the car. After being weighed, weight panchnama was prepared. 2-2 samples each containing 100 Grams were prepared from each of the 3 bags and were sealed and marked as A1, A2, B1, B2, C1 and C2. After return to the police station, the sample packets and the remaining quantity of Ganja were deposited in the Malkhana. First Information Report (Ex.P20) was registered. Out of the 2-2 sample packets, 1-1 packets, i.e., A1, B1 and C1 were sent to the Forensic Science Laboratory for chemical examination. FSL report (Ex.P23) is positive. On completion of the investigation, a charge-sheet was filed against the Appellant and co-accused Reena Das for offence punishable under Section 20(b) of the Act. Charge was framed against them under Section 20(b)(ii)(C) of the Act.

3. To rope in the accused persons, the prosecution examined as

many as 7 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. 2 witnesses, namely, Firturam Banware and Sunil Maldhani were also examined as Court Witness No.1 (CW1) and Court Witness No.2 (CW2), respectively.

4. After completion of the trial, vide the impugned judgment dated 10.5.2017, the Trial Court acquitted co-accused Reena Das of the charge framed against her, but convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that both the seizure witnesses have not supported the case of the prosecution. The Trial Court has ignored the material irregularities in the case and without finding any legal evidence on record convicted the Appellant. Statement of the Investigating Officer does not inspire confidence for conviction of the Appellant and there are material discrepancies in his statement. His statement has not been duly corroborated by the independent witnesses. It was further submitted that according to the prosecution story, total 47.370 Kgs. of Ganja was recovered in 3 plastic bags, but, according to the statement of Malkhana Moharrir Head Constable Ram Pratap Yadav (PW1), he received 47.370 Kgs. of Ganja and 6 sample packets of total 600 Grams marked as A1, A2, B1, B2, C1 and C2. Thus, the 6 sample packets of Ganja were not prepared from the seized Ganja and the 3 packets which were sent to the FSL for chemical examination were part of the seized Ganja is also not

established. It was further submitted that the seized Ganja was also not placed before the Trial Court and, therefore also, the conviction imposed upon the Appellant is not proper. Reliance has been placed upon **2011(2) CG.L.R.W. 65 (SC) (Ashok @ Dangra Jaiswal v. State of Madhya Pradesh)**.

6. Learned Counsel appearing for the Respondent/State supported the impugned judgment of conviction and sentence and submitted that though the seizure witnesses have not supported the case of the prosecution, Investigating Officer N.L. Dhritlahre (PW7) and other witnesses have supported the case of the prosecution and they have remained firm in their statement. Thus, their statement has rightly been relied upon by the Trial Court. It was further submitted by the State Counsel that from the statement of N.L. Dhritlahre (PW7), the entries made in specimen weight panchnama (C9), the seizure memo of the contraband article (C10) and the acknowledgment (Ex.P1) given by the Malkhana Moharrir, it is well established that the sample packets were prepared from the seized Ganja itself and those sample packets were first deposited in the Malkhana along with remaining seized quantity of Ganja and out of the deposited 6 sample packets of Ganja, 3 packets were sent to the FSL for chemical examination.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. Both the seizure witnesses, namely, Firturam Banware (Court Witness No.1) and Sunil Maldhani (Court Witness No.2) have not supported the case of the prosecution.

9. Investigating Officer N.L. Dhritlahre (PW7), in his Court statement, has stated that on 31.5.2014, he received information that 2 persons were travelling from Raipur carrying Ganja in the dickey of a vehicle. He recorded this information in Rojnamcha Sanha (Ex.P12) and also prepared Mukhbir Suchna Panchnama (Ex.P13). He has further deposed that in compliance with the provision contained in Section 42 of the Act, he forwarded the said information to the higher officer vide Ex.P5. He also made entries of forwarding of the information in Rojnamcha Sanha (Ex.P14). This statement is duly corroborated by Constable Virendra Sahu (PW4) and Head Constable Devendra Tiwari (PW3). Constable Virendra Sahu (PW4) has deposed that he had gone to the office of the C.S.P. along with Mukhbir Suchna Panchnama and submitted the same and obtained acknowledgment thereof (Ex.P5). Head Constable Devendra Tiwari (PW3), who, on the relevant date, was posted in the office of the C.S.P., has also corroborated this statement of Virendra Sahu (PW4). Investigating Officer N.L. Dhritlahre (PW7) has further deposed that thereafter without obtaining a search warrant, he moved towards the spot along with staff and relevant entries were made in Rojnamcha Sanha (Ex.P16). On the spot, he stopped the car bearing registration No.CG 04 HA 4850. Both the Appellant and the acquitted accused were found inside the car. He gave them a notice (Ex.C2) under Section 50 of the Act for search of the car. He obtained acknowledgment thereof (Ex.C3) from them for their search. Thereafter, he searched the dickey of the car. He found that contraband article was kept in the dickey of the car in 3 white plastic bags. He prepared search panchnama (Ex.C4) and recovery panchnama (Ex.C5). He also prepared identification

panchnama (Ex.C6) of the recovered contraband article. Thereafter, a weighing article was called for from Yunus Khan and physical verification panchnama (Ex.C7) of the said weighing article was also prepared. Thereafter, the recovered Ganja was weighed. In the first bag, 20.370 Kgs. of Ganja was found. In the second bag, 20 Kgs. of Ganja was found and in the third bag, 7 Kgs. of Ganja was found. He prepared weight panchnama (Ex.C8). 200-200 Grams of Ganja were taken out from each of the 3 bags and total 6 sample packets each of 100-100 Grams were prepared. He also sealed all the 6 sample packets and marked them as A1, A2, B1, B2, C1 and C2 and prepared a panchnama thereof (Ex.C9). This witness has further deposed that after return to the police station, 47.370 Kgs. of Ganja and 6 sample packets as prepared by him on the spot were deposited by him in the Malkhana and acknowledgment thereof (Ex.P1) was obtained.

- 10.** Head Constable Ram Pratap Yadav (PW1) has corroborated the above statement regarding deposit of the above articles in the Malkhana. He has stated that on 31.5.2014, he received the above articles in Malkhana and gave acknowledgment thereof (Ex.P1) and made relevant entries in Malkhana Register (Ex.P2).
- 11.** Investigating Officer N.L. Dhritlahre (PW7) has further deposed that he sent the sealed sample packets marked as A1, B1 and C1 to the Forensic Science Laboratory for examination vide memo (Ex.P8). As stated by this witness, he received report (Ex.P23) from the FSL. The FSL Report (Ex.P23) is positive.
- 12.** Constable Amar Singh Chanta (PW5) has stated that he had taken sealed packets marked as A1, B1 and C1 from Malkhana to the

FSL and after depositing the same in the FSL, he had obtained acknowledgment thereof (Ex.P7). Malkhana Moharrir Ram Pratap Yadav (PW1) has also stated that he had given 3 sealed packets to Constable Amar Singh Chanta (PW5) and obtained acknowledgment thereof dated 3.6.2014 (Ex.P3) from him. Investigating Officer N.L. Dhritlahre (PW7) has also stated that after completion of all the proceedings he had forwarded intimation thereof to the C.S.P. office and made entries regarding this in Rojnamcha Sanha (Ex.P22). Constable Virendra Sahu (PW4) has corroborated the above statement and has stated that on 1.6.2014 he had taken the information of complete proceedings to the C.S.P. office and after submitting the same had obtained acknowledgment thereof (Ex.P6). This statement is also corroborated by Head Constable Devendra Tiwari (PW3), who was the then Reader of the office of the C.S.P.

- 13.** On a minute examination of the above evidence, it is clear that independent witnesses of seizure, i.e., Firturam Banware (CW1) and Sunil Maldhani (CW2) have not supported the case of the prosecution, but Investigating Officer N.L. Dhritlahre (PW7) has categorically stated about each and every action taken by him regarding search and seizure of the contraband article. N.L. Dhritlahre (PW7) has remained firm during his cross-examination. I see no reason to disbelieve his statement. From the statements of Investigating Officer N.L. Dhritlahre (PW7), Head Constable Devendra Tiwari (PW3) and Constable Virendra Sahu (PW4), it is also established that the provisions of Sections 42 and 57 of the Act have been duly complied with in this case. From the evidence adduced by the prosecution, it is also established that after return

to the police station, the seized contraband article and the sample packets were deposited in the Malkhana and on 3.6.2014, 3 packets marked as A1, B1 and C1 were deposited in the FSL by Constable Amar Singh Chanta (PW5). As reported by the FSL, the seal of the packets received by them in the FSL were intact.

14. The argument advanced by Learned Counsel appearing for the Appellant that the 6 sample packets of Ganja were not prepared from the seized Ganja and the 3 packets which were sent to the FSL for chemical examination were part of the seized Ganja is also not established is not sustainable because Investigating Officer N.L. Dhritlahre (PW7), in paragraph 12 of his cross-examination, has categorically stated that the first bag had contained 20.370 Kgs. of Ganja out of which 2 sample packets each containing 100 Grams of Ganja were prepared and sealed and remaining 20.170 Kgs. of Ganja were sealed in a bori (bag) and he marked A1 and A2 to the sample packets prepared from the first bag. In the second bag, 20 Kgs. of Ganja were kept out of which he prepared 2 sample packets each containing 100 Grams of Ganja and marked them as B1 and B2 and remaining 19.800 Kgs. of Ganja were sealed in a different bag. In the third bag, 7 Kgs. of Ganja were kept out of which he prepared 2 sample packets each containing 100 Grams of Ganja and marked them as C1 and C2 and he sealed remaining 6.800 Kgs. of Ganja in a different bag. The above statement of N.L. Dhritlahre (PW7) has not been rebutted during his cross-examination. Thus, from the above, it is established that total 47.370 Kgs. of Ganja was seized from the spot and out of this quantity, total 6 sample packets each containing 100 Grams of Ganja were prepared and after

preparation of the 6 sample packets, remaining quantity of Ganja along with the sample packets were deposited in the Malkhana and out of the 6 sample packets, 3 sample packets, namely, A1, B1 and C1 were sent to the FSL for chemical examination.

15. **Ashok @ Dangra Jaiswal case** (supra), relied upon by Learned Counsel appearing for the Appellant is distinguishable because the facts of the cited case are entirely different from the case in hand.
16. Consequently, I find no substance in the instant appeal. The appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE