

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 364 of 2004

Judgment reserved on 03.10.2019

Judgment delivered on 23.10.2019

Tulsiram S/o. Rajkumar, Aged 36 years, Occupation Labourer, R/o.
Village Sonarpal, P.S. Bhanpuri, District Bastar (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh through P.S. Bhanpuri, Distrit Bastar
Chhattisgarh)

---- Respondent

For Appellant : Ms. Usha Chandrakar, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

1. This appeal is preferred against the judgment of conviction and order of sentence dated 04.03.2004 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Bastar at Jagdalpur in Special Criminal Case No. 41/2003, wherein the trial Court convicted the accused/appellant under Section 20 (B) (II) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 15,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.
2. The prosecution case in brief is that, on 15.09.2003 Bhagwat Prasad Tiwari (PW-1) received a secret information that the appellant was carrying a bag having Narcotiic substance Ganja in his bicycle. The Investigating Officer lodged this information in rojnamchasanha

Ex.P 1(c), requisite the witnesses for enquiry prepared the Mukhbir Suchna Panchnama (Ex-P-2). He dispatched the said information to Additional Superintendent of Police Jagdalpur vide Ex.P/25. Thereafter, Police Party including witnesses rushed to the spot and apprehended the accused/appellant. He gave notice Ex.P-7 under Section 50 of NDPS to the appellant, informing him about his right to be searched in presence of a Gazetted Officer or a Magistrate. The appellant gave consent to be searched by the officer present, which was recorded as Ex.P-8. On examination by sniffing and burning, the said substance was found to be cannabis vide Ex. P-10 which on weightment vide Ex. P-12 came out to be 5 kilograms and then after being homogenized vide Ex. P-13 two samples of 30-30 grams each were taken out. The accused was arrested as Ex.P-15 and he was also informed in writing about his arrest under Ex.P-16 and thereafter the whole incident was recorded in Rojnamcha as Ex.P-17(c). First Information Report (Ex.P-18) was registered against the appellant and seized bag and samples of ganja were deposited in malkhana vide Ex.P/19. Sample packets of ganja were sent for FSL, Raipur for examination Ex.P-25. Receipt of FSL is Ex.P-27 which confirmed that the contents of the sample packets was narcotics substances ganja vide Ex.P30. All legal formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellant in the Court of Special Judge NDPS Act Bastar wherein the Special Judge framed charges as mentioned above to which the appellant did not plead guilty. The Special Judge conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the CrPC was recorded and after

completion of trial, the Additional Sessions Judge considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel appearing for the accused/appellant submits that the Court below erred in convicting the appellant particularly when the prosecution has failed to prove its case beyond reasonable doubt. He submits that there is violation of Sections 42 and 50 of the NDPS and the judgment of trial Court is not sustainable in the eye of law. He further submits that the Sukhdeo (PW-4), Lakeshwar Kashyap (PW-5) have not supported the case of the prosecution and they have been declared hostile.
4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
5. Upon perusal of the entire evidence especially the evidence of the Investigating Officer Bhagwat Prashad Tiwari (PW-1), other independent witnesses PW-4, PW-5 and from the FSL report, it appears that the prosecution had proved beyond reasonable doubt that on the date of incident the accused/appellant was in illicit possession of 5 kg of ganja. With this, the judgment of conviction passed by the trial Court against the appellant/accused does not require any interference, hence, the same is affirmed.
6. Heard on sentence part, the appellant has already suffered jail sentence awarded by the trial Court and again he suffered further jail sentence awarded in default stipulation of fine, his sentence is

also not required to be interfered with by this Court. For the foregoing reason, the appeal fails and is hereby dismissed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh