

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 613 of 2010

Ballu Vishwakarma S/o Lacchi Vishwakarma, aged about 45 years, Caste Lohar
R/o Village Dharampura, Tahsil & Police station Bijawar, Distt. Chhattarpur
(M.P)

---- Appellant

Versus

State of Chhattisgarh through Police Station Saraipali, Distt. Mahasamund
(C.G.)

---- Respondent

For Appellant	:	None
For Respondent	:	Ms. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

18/11/2019

1. By the impugned judgment dated 23/07/2010 passed in Special Criminal Case No. 1/2010 by the Special Judge, Narcotic Drugs and Psychotropic Substances Act, Mahasamund (C.G.), the Appellant has been convicted under Section 20 (B) (II) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act') and sentenced to undergo RI for 4 years and to pay fine of Rs. 20,000/- with default stipulation.
2. Facts of the case are that on 15/12/2009 Sub Inspector Nirbhay Singh Rajput received a secret information from the informant that the Appellant who seems to be an outsider, is standing at Bus Stand and is carrying Ganja. The information was recorded. Nirbhay Singh called the witnesses and reached to the spot. A notice under Section 50 of the Act was given to the Appellant and his consent was obtained.

On being search total 5.7 KG Ganja was found from his possession which was seized. Two samples packets of 25 grams each were prepared. After completing other formalities, FIR Ex.P-25 was registered. The seized Ganja and samples packets were deposited in Malkhana. Thereafter, sample packets were sent for its examination to Forensic Science Laboratory. The report is positive. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 7 witnesses. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. A certificate of incarceration sent by the Jail Superintendent, Central Jail, Raipur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and already released 14/06/2014.
5. Since no one appears on behalf of the Appellant, therefore, I am going to decide this appeal on its merit.
6. I have heard Learned Counsel appearing for the State and perused the record.
7. Gulalu @ Jitendra (PW1) and Gadesh (PW2) are the witnesses before whom, the seizure was made. Both have not supported the case of the prosecution and have turned hostile. Manoj Yadav (PW3) is a witness who weighted the Ganja. This witness has also not supported

the case of the prosecution and has turned hostile. Sub Inspector Nirbhay Singh Rajput (PW4) is a witness who inquire and investigated the matter. In his Court statement, he has stated that he received a secret information on 15/12/2009 and recorded the same in the Rojnamcha Sanha. Thereafter, he called the witnesses. In compliance of Section 42 of the Act, he sent information to the higher official vide Ex.P.-2. He prepared Mukhbir Suchna Panchnama vide Ex.P-3. He received to the spot and in compliance of Section 50 of the Act, gave a notice to the Appellant vide Ex.P-4 and obtained his consent for search. Thereafter, before witnesses he searched the Appellant. The Appellant was carrying air bag in which he had kept Ganja which was seized vide Ex.P-10. The said article was weighted vide Ex.P-12. Total weight of the article was 5.7 KG. He prepared two sample packets each of 25 grams. The Ganja was sealed and prepared a Panchnama vide Ex.P-13. After returning to the police station, the seized Ganja and sample packets were deposited in Malkhana and obtained acknowledgment vide Ex.P20. Information of entire proceeding was also sent to higher official vide ex.P-21. He further stated that the sample packets were sent for its examination vide Ex.P-23. This witness has remained firmed during his cross-examination.

8. Constables Dolamadi (PW5) and Gokul (PW6) have also supported the statement of Nirbhay Singh (PW4). Alekha Barik (PW7) has also supported the case of the prosecution and has stated that the sample packets were deposited and were sent for its examination to FSL.
9. On minute examination of above evidence, it makes clear that though the independent witnesses have not supported the case of the

prosecution, from the statement of Nirbhay Singh (PW4) which was duly corroborated by Dolamadi (PW5), Gokul (PW6) and Alekha Barik (PW7) who remained firmed during their cross-examination, it is well established that other mandatory provisions of the Act has been complied with. Thus, the finding of the trial Court is in accordance with law and the said Court has rightly convicted the Appellant.

10. Consequently, I do not find any merit in this appeal. The same is dismissed.

**Sd/-
(Arvind Singh Chandel)
Judge**