

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25-01-2019

Delivered on 08-03-2019

CRA No. 51 of 2011

- Kanhu Charan Choudhari s/o. Shri Surendra Kumar Choudhari aged 21 yrs, r/o. Ward No. 1 Barampur, Dist. Ganjam (Udisa).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Saraipali, Dist. Mahasamund (CG).

---- Respondent

For Appellant	:	Mr. Manoj Mishra, Advocate appears as Amicus Curiae
For respondent/State	:	Mr. Raghavendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 14-10-2010 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Mahasamund, District Mahasamund (CG) in Special Sessions trial No. 2 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.25000/- with default stipulations.

2. As per version of prosecution, on 23-2-2010 at about 2.30 pm the Incharge of Police Station Saraipali received information from

Mukhbir that one person who came from Udisa was standing at Bus stand, Saraipali having possession of Ganja in his suit case. The said Information was recorded and two independent witnesses were called. Information was sent to higher authorities, thereafter the Police Officer rushed to the spot along with independent witnesses and police personnel and contraband articles were seized. The matter was reported and 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) Mandatory provisions of the Act, 1985 have not been complied with by the authorities, therefore, finding of the trial Court is not liable to be sustained.
- ii) The trial court failed to consider the omissions and contradictions on the material point in the statements of the prosecution witnesses.
- iii) The trial Court ought to have taken adverse inference that panch witnesses Manoj Yadav has not been examined by the prosecution.
- iv) Looking to the irregularities, it is not a case of conviction, therefore, finding of 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. Sub Inspector of Police Station, Saraipali namely Narendra Yadav (PW/4) deposed before the trial Court that he received information from Mukhbir on 23-2-2010 that one person was standing at Bus stand, Saraipalai and he is in possession of contraband article Ganja. Two independent witnesses were called through notice and information recorded by him was sent to Sub Divisional Officer (Police) Mahasamund as per Ex. P/1 and then he rushed to the spot with independent witnesses and police personnel. He gave notice in writing as per Ex.P/9 to the appellant that he is entitled to be searched by Gazetted Officer or by Magistrate, but he opted to be searched by this Police Officer. First all the police personnel and independent witnesses were searched and no objectionable articles were found in their possession. Thereafter, suit case of the appellant was searched in which contraband article was found. One electronic weighing machine

was called and it was checked and after weighing seized article was found to be 12 kgs. Two samples of 25 grams each were separated from seized article and articles and samples were sealed and seizure memo was prepared and thereafter seized articles were handed over to Incharge of Malkhana who kept the same in Malkhana and gave him acknowledgement as per Ex.P/23. He further deposed that information regarding seizure was sent to Superintendent of Police, Mahasamund. Version of this witness is supported by version of PW/5 Gulalu @ Jitendra Singh.

7. As per version of PW/2 Gokul Pradhan, who was Incharge of Malkhana, he kept the seized article safely in Malkhana of Police Station as per Ex.P/5 and recorded the same in Malkaha register. As per version of PW/3 Nilambar Singh, Head Constable No.44, seized articles were deposited by him in FSL and acknowledgement as per Ex.P/6 was brought by him and submitted to Police Station Saraipali. Constable Aalekh Barik (PW/1) deposed that information of Mukhbir and further proceeding of seizure were submitted to Office of Sub Divisional Officer (Police) Mahasamund. As per report of FSL (Ex.P/29) test of Ganja was found positive. Though PW/6 Kesari Nandan Sen did not support the factum of seizure, but the fact remains that if he was not present at the time of seizure he is not real witnesses

of the incident and if he suppressed the fact even after his presence on the spot, his version is not reliable. Version of the Police Officer cannot be discarded merely because he is a Police Officer. The trial Court has elaborately discussed the entire evidence and recorded finding that quantity of Ganja is neither commercial nor small quantity.

8. 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. Argument advanced on behalf of the appellant on this count is not sustainable.

9. All the witnesses have deposed in affirmative regarding seizure of contraband article Ganja from the possession of the appellant. There is no material contradiction which warrants interference by this court to the judgment of conviction. Illegal possession of quantity of Ganja is 12 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.

10.. 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