

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 778 of 2009**

Dhanesh Kumar Sahu, S/o Shankar Lal Sahu, Aged about 30 Years,
Caste- Teli, R/o Village- Bhimbhori, Police Station- Berla, Present
R/o Housing Board Colony, Quarter No.16, Kumhari, Police Station-
Kumhari, District- Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station- Farasgaon, District-
Bastar (C.G.)

---- Respondent

For Appellant : Mr. Aman Kesharwani, Advocate.
For State : Mr. Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

11/02/2019

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 27.10.2009 passed by Special Judge (NDPS Act), Jagdalpur (C.G.) in NDPS Special Case No. 22/2008, wherein the said court convicted the respondent for commission of offence under Section 20(b)(ii)(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 10 years and fine of Rs. 1,00,000/- with further default stipulation.
2. As per version of the prosecution, on 11.01.2008, while Assistant Sub-Inspector -T.R. Nag (PW-4) along with his staff were checking the vehicles in front of the police station on the road, at about 9:30 a.m., a white colour vehicle, namely

Marshal, reached there with high speed and broke away the barriers and attempted to run away. When the police party chased the vehicle, two persons ran away from the vehicle while the appellant was caught there. Panchnama was prepared and notice under Section 50 of the Code of Criminal Procedure, 1973 was supplied to the appellant. The appellant opted for search by the said police officer. The police party searched to the appellant and thereafter, the police party searched the vehicle and found 11 bags of contraband article Ganja weighing 154 Kg. and 200 Grams. Samples were prepared from each bags and sample and rest of the article was handed over to in-charge of Malkhana of said police station for keeping the same in safe custody. After legal formalities, sample of the seized article was sent for chemical examination to Forensic Science Laboratory where test of Ganja was found positive. The appellant was charge-sheeted and after completion of trial, convicted as mentioned above.

3. Learned counsel for the appellant submits as under :-

- (i) Mandatory provision of Section 42 & 50 have not been complied with and weighing of Ganja is also suspicious.
- (ii) Physical possession of the appellant over the said article is not established, therefore, seizure from the appellant is not proved.
- (iii) Independent witnesses Dilip Ganjir (PW-2) & Kartik (PW-5) have not supported version of the prosecution and prosecution is not able to prove its case beyond shadow of

doubt, therefore finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Assistant Sub-Inspector T. R. Nag (PW-4) deposed before the trial court that he was searching vehicles and at about 10:00 a.m., one white colour Marshal vehicle did not stop and after breaking the barrier went ahead that is why they chased the vehicle in which, the appellant was found. After their search, they searched the vehicle, in which 11 bags of Ganja was found and after weighing, it was found to be 154 Kg and more. He further deposed that he supplied a notice under Section 50 of the Act, 1985 to the appellant and the appellant opted to be searched by said police officer and then he searched the vehicle.
6. He further deposed that the information was sent to Sub-Division Officer (Police) as per Ex.P/2 and after seizure, prepared two samples from each bags of 50 grams and they were marked as A-1, A-2 and so on upto K-1, K-2. All the samples and rest of the article of 11 bags were sealed and again, one specimen seal was also prepared. He further deposed with seized article were handed over to in-charge of Malkhana for keeping the same in safe custody. All the

formalities were recorded in Rojnamcha Sanha and information of seizure was sent to Sub-Divisional Officer (Police) as per section 57 of the Act, 1985. This witness has been subjected to searching cross examination, but nothing could be elicited in favour of defence. Version of this witness is supported by version Constable- Shobha Ram Deshmukh (PW-3) who accompanied to this witness.

7. True it is that Dilip Ganjir (PW-2) and Kartik (PW-5) have not supported factum of seizure, but the fact remains that if they are not the real witnesses to the incident and not present during search, their version is not useful for deciding the issue and if they were present on the spot suppressing the fact before the trial court, their version is not reliable.
8. There is settled law that statement of police officer cannot be discarded merely on the ground that he is the police officer, his version is supported by other witnesses. As per version of Head Constable- Mahesh Kumar Kunjam (PW-1), he received one vehicle and 11 bags of contraband article Ganja and kept the same in safe custody which is recorded in register of Malkhana as per Ex.P/1. He further deposed that he gave sample to Constable- Shyamlal Nag and Constable- Ajay Kashyap for depositing the same to Forensic Science Laboratory for examination. As per report of the Forensic Science Laboratory, Constable-Shyamlal Nag deposited 11 articles are marked as A-1 upto K-1. After examination of the samples, test of Ganja was found positive.

9. In the present case information was sent to higher authority as per provision of Section 42 of the Act. Though, it is a case of search of vehicle, but first notice was served as per Section 50 of the Act, 1985, the property was kept in safe custody of Malkhana as per provision of Section 55 of the Act, 1985 and all the information regarding seizure and search were sent to Sub-Divisional Officer (Police) as per provision of Section 57 of the 1985. In this way, the argument advanced on behalf of the appellant is not sustainable.
10. Again, in the present case, all the procedures have been performed by Assistant Sub-Inspector T.R. Nag (PW-4) before recording FIR, but did not investigate after registration of FIR, because seizure and other proceeding were already done before lodging the FIR. From the charge-sheet, it appears that the seized article were forwarded to court, all the articles seized in the present case were custodia legis during trial.
11. There is nothing on record that appellant has been falsely roped with the charges on account to grudge against any of the police officer, therefore, version of police officer is inspiring confidence and the same is not liable to be rejected. Possession to the tune of 154 Kg. of contraband article Ganja by the appellant is established. Quantity of 20 Kg. is commercial quantity, therefore, contraband article Ganja seized in the present case falls within commercial quantity for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence:

12. The trial court awarded minimum sentence for offence punishable under Section 20(b)(ii)(C) of the Act, 1985 and less than minimum cannot be awarded. The trial Court awarded sentence of R.I. for 10 years to the appellant which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
13. It is reported that the appellant is in jail, therefore, no further order etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge