

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1315 of 2015**

- Sarman Athaya, S/o Late Shri Mohan Athya, aged about 28 Years, R/o Aslouna, Thana-Patharia, District-Damoh, Madhya Pradesh.

---- Appellant

Versus

- State of Chhattisgarh Through Police-Station-Kotwali, District-Raigarh, Chhattisgarh.

---- Respondent

For the Appellant : Mrs. Smita Jha, Advocate.

For the State/Respondent : Mr. Samdarsh Nirankari, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****10/04/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 27.08.2015 passed by the learned Special Judge (NDPS Act), Raigarh in Special Criminal Case No.H-1/2014 convicting the accused/appellant under Section 20(B)(2)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to undergo RI for 7 years with fine of Rs.15,000/- plus default stipulation.

2. The prosecution case, in brief, is this that on 25.10.2013 S.I. Ibrahim Mohammad Kuraishi PW-5 received confidential information that a person is engaged in transportation of illegal contraband. This information was recorded in Panchnama ExP-2 and intimation was also sent to the superior authority in compliance of Section 42 of NDPS Act. The witnesses were summoned and S.I. Ibrahim Mohammad Kuraishi PW-5 reached the spot alongwith witnesses and team. The appellant was found present there, who was served with a notice under Section 50 of the NDPS Act vide ExP-11 and informed about his statutory right. The appellant then gave consent vide ExP-13 to be searched by S.I. Ibrahim Mohammad Kuraishi PW-5. Search of baggage of the appellant was conducted in presence of witnesses and total 10 packets containing ganja were recovered vide Ex.P-16. A test procedure of recovered material was carried out on the spot vide Ex.P-17 and it was found that the material found in the packets was ganja, a contraband.
3. The contraband was seized on the spot itself vide Ex.P-20. After returning to the police-station, FIR ExP-17 was lodged by S.I. Ibrahim Mohammad Kuraishi PW-5. Samples were prepared from the seized articles and sent for FSL examination and as per FSL report Ex.P-26, the contents of samples were found to be ganja, a narcotic substance. After completion of investigation, charge-sheet was filed before the

concerned Court.

4. The appellant was charged with the offence under Section 20(B)(2)(b) of the NDPS Act. Appellant abjured his guilt and sought trial. The appellant was examined under Section 313 of CrPC, in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No witness was examined in defence. After completion of trial, the trial court vide impugned judgment convicted and sentenced the appellant in the manner as mentioned herein above.
5. It is submitted by counsel for appellant that the prosecution has failed to prove its case beyond reasonable doubt, therefore, conviction against the appellant is bad in law. Shiwam Sarthi PW-4, who is an independent witness, has not supported the prosecution case. Similarly, Manas Karamkar PW-6, another independent witnesses, has also not supported the prosecution, therefore, he was declared hostile by the prosecution. Similarly, Peeladau PW-7, an independent witness, has also not supported the prosecution case and turned hostile. Hence, conviction is based only on the evidence of police witnesses and for these reasons, the appellant is entitled for acquittal in this case.
6. Learned counsel for the State has opposed the grounds raised in this appeal as also arguments advanced by learned counsel for the appellant. It is submitted that PW-5 S.I.

Ibrahim Mohammad Kuraishi has clearly stated about the search and seizure of the contraband from the possession of appellant. His evidence is reliable and trustworthy and nothing has come on record showing that this witness had any personal interest in falsely implicating appellant in such a case. Other witness, who are members of raiding party, have also clearly supported the prosecution case. Therefore, no case is made out for acquittal of appellant or for reduction of sentence.

7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. S.I. Ibrahim Mohammad Kuraishi PW-5, has stated before the Court that on the date of incident, on receipt of secret information regarding transport of contraband by one person, he immediately prepared a Panchnama Ex.P-2 and thereafter made an entry in the Station House Diary (SHD) vide ExP-6. As there was no time to obtain search warrant, therefore, he dispatched information vide ExP-3 to the City Superintendent of Police, Raigarh. The entry of receipt of that information is in the diary of CSP Office and copy of the same is ExP-7. Thereafter he summoned the witnesses to remain present at the time of procedure of raid and entry in this regard was made in the SHD vide Ex.P-9. The police party along with witnesses left for the spot and an entry in this regard was also made in the SHD vide ExP10. He has stated that on reaching

the spot, he found the appellant present there. Notice of Ex.P-11 was given to the appellant and he was orally informed about his entitlement to be searched in presence of a Magistrate or a Gazetted Officer. He has stated that the appellant then gave consent vide ExP-13, in presence of witnesses, to be searched by police officials and thereafter the search of appellant was taken in presence of witnesses after giving search of the raiding members to the appellant in which nothing objectionable was found. Panchnama of search of police personnels and independent witnesses are Ex.P-14 & P-15. He has stated that after all these procedures, two bags of green color in possession of the appellant were searched and it was found that the bags containing 10 packets of polythene containing ganja and thereafter recovery memo Ex.P-16 was prepared on the spot which was signed by the independent witnesses. He has stated that recovered substance was rubbed, smelled and tested and it was found to be ganja vide ExP-17. He has further stated that a weighing machine was summoned at the spot to weigh the contraband and on weighing the contraband vide Ex.P-18, each packet was found containing 1000 gm of ganja. Two samples of 100 gm each were separately prepared and sealed. Weighment panchnama ExP-19 was prepared on the spot. Remaining 9.8 kg gangja contained in the packets and sample packets were seized vide ExP-20. He has stated that he arrested the appellant on the spot. He prepared the spot map ExP-23.

After returning to the police-station, the sealed packets of ganja and samples were handed over to the Malkhana Muharrir and acknowledgment was received vide ExP-24, regarding which another entry was also made in rojnamcha sanha vide ExP-25. Thereafter this witness proceeded to record statement of witnesses under Section 161 of CrPC. Samples of seized articles were sent by him to FSL and after examination of samples by FSL, a report was received vide Ex.P-28. He has also stated about sending of complete information to the CSP, Raigarh vide ExP-31. In cross-examination, he has denied that all proceedings were carried out in the police-station and that all the signatures of appellant were obtained on blank papers. He has denied about non-presence of witnesses at the time of proceedings. No question has been put to him that this witness had any personal grudge against the appellant or he had any previous enmity which may be considered as a reason for falsely implicating the appellant. Thus, statement made by S.I. Ibrahim Mohammad Kuraishi PW-5 remained totally unrebutted.

9. The independent witnesses Manas Karamkar PW-6 has though stated that he was informed that some ganja was seized in two bags but he has not made any other statement in support of the prosecution case, therefore, he was declared hostile and discredited by the prosecution. Peeladau

PW-7 has also stated that he and Manas Karamkar PW-6 both were summoned on the spot where he saw two bags and he was informed that the bags contained contraband. However, he has also not made any statement in support of the prosecution, therefore, he has also been declared hostile and discredited by the prosecution. These witnesses have made a statement to this extent, that they were called in connection with recovery and seizure proceedings of ganja which itself is sufficient to support the statement given by S.I. Ibrahim Mohammad Kuraishi PW-5 that he had been to the spot for search and seizure of contraband.

10. Head Constable Atwaram PW-1 has stated about receiving of contraband & samples for keeping them in safe custody and sending of samples to FSL for chemical examination. This witness remained firm in his cross-examination.
11. Atwa Ram PW-1 is a member of the raiding team. He has supported the statement given by S.I. Ibrahim Mohammad Kuraishi PW-5 and nothing could be brought in the cross-examination by the defence so as to impeach the evidence of PW-5.
12. Constable Mukesh Tripathi PW-3 is the messenger, who carried the information given by S.I. Ibrahim Mohammad Kuraishi PW-5 to the office of CSP. Shiwam Sarthi PW-4 is another witness who has not supported the prosecution case

and declared hostile.

13. After closely scrutinizing all the evidence of prosecution witnesses, I am of this opinion that in this case S.I. Ibrahim Mohammad Kuraishi PW-5, who conducted raid and thereafter investigated the case, is the key person. He has stated in detail regarding the procedure adopted during raid. His statement not only remained totally unrebutted in his cross-examination but also finds support from other witnesses. No reason could be assigned on behalf of the defence to show that S.I. Ibrahim Mohammad Kuraishi PW-5 had any personal grudge or previous enmity to make a false statement for the purpose of falsely implicating the appellant in this case. Further, there is no such rule that the police witness should always be disbelieved. There is only a rule of caution to be followed in such cases where the case rests only on the statement of police witnesses which has been followed by the Court below and conclusion has been drawn. Therefore, after due consideration, I am of this opinion that no error has been committed by the Court below in convicting the appellant for the offences- 20(B)(2)(b) of the NDPS Act, 1985 by the impugned judgment, which warrants interference by this Court in exercise of appellate jurisdiction.

14. Considered on the prayer for reduction of sentence made by the counsel for appellant. As it appears that the appellant is in jail since 28.9.2012 which shows that he has been in custody

for almost 5½ years. It has also been submitted by the counsel for appellant that the appellant is poor person and he has been unable to pay fine amount. After due consideration, I feel that ends of justice would be served if the sentence imposed upon the appellant is reduced.

15. Accordingly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 20(B)(2)(b) of the NDPS Act, sentence imposed upon him is modified and reduced from RI for 7 years & fine of Rs.15,000/-, to RI 6 years & fine of Rs.1,000/-. In default of payment of fine, he shall undergo further RI of two months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha