

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2686 of 1998**

- Ganpati Verma, Son of Giricyhand Verma, aged 33 years, resident of village sale, police station Kasdol, District Raipur, M.P. (Now C.G.)

---- Appellant**Versus**

- State of Madhya Pradesh (Now C.G.)

---- Respondent

For Appellant	Shri Vipin Singh, Advocate.
For Respondent/State	Shri Avinash Choubey, P.L.

HonBle Shri Justice Gautam Chourdiya
Judgment on Board

08/08/2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.10.1998 passed by the Special Judge/Second Additional Sessions Judge, Baloda Bazar, District Raipur, M.P. (Now C.G.) in Special Case No.150/1996, convicting the accused/appellant under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the Act") and sentencing him to undergo RI for 5 years and to pay a fine of Rs.25,000/-, in default of payment of fine S.I. for 5 years.
2. Case of the prosecution in brief is that on 05.11.1996, a secret information was received by a Station House Officer, Kasdol namely Shri Prithvi Dubey that the appellant has caused accident by motorcycle bearing no.MP23A/8647 in which he is carrying illicit Ganja. The Station House Officer after preparing panchnama and sending information to Sub-Divisional Officer proceeded with police staff for the

indicated place and apprehended the appellant. After obtaining his consent a search being made on his motorcycle, one jute bag was recovered from the Dickey of motorcycle containing contraband. On weighment being done, it was found 2 Kg. After drawing 30 gm Ganja from the said quantity, it was sent for chemical examination. As per FSL report Ex.P-15, which confirms the seized contraband to be Ganja.

3. After completing necessary formalities of investigation, the charge sheet was filed against the appellant by the police under Section 20 (b) of NDPS Act, 1985. The trial Court framed the charge under Section 20 of the NDPS Act, 1985 against him.
4. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all namely PW-1 Dr. Y.K. Sharma, PW-2 Khorbehra, PW-3 Bansilal, PW-4 Mohan Singh Painkara, PW-5 Malikram, PW-6 Rama Shankar Soni, PW-7 Virendra Kumar Rai, PW-8 Prithvi Dubey, PW-9 Devendra Banjare and PW-10 Jageshwar Das. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment.
6. Learned counsel for the appellant submits that in this case the procedure provided under Sections 50, 41 & 42 has not been complied with by the I.O and there is no specific seal mentioned in the seized article from the accused and no any document produced after the

seizure to show as to whether seized contraband was kept in safe custody. Therefore, there is major scope of manipulation in the case. At the time of incident, accused was injured and admitted in hospital, he had no knowledge about the incident, he was informed by the police only about the accident but after sometime he was arrested and falsely implicated in this case. Alternatively, he submits that if this Court ultimately comes to the conclusion that conviction of the appellant is just and proper, considering the fact that at the time of accident, the appellant was 31 years of age, the incident occurred on 05.11.1996 i.e. about 24 years ago, there is no criminal antecedent, he has already remained in jail near about seven months. He may be sentenced to the period already suffered by him.

7. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant as well as the sentence imposed thereunder are strictly in accordance with law and there is no infirmity in it warranting interference by this Court.
8. Heard counsel for the respective parties and perused the material on record.
9. As per statements of PW-6 Ram Shankar Soni, PW-8 Prithvi Dubey & PW-10 Jageshwar Das, it is evident that PW-8 had asked the accused whether he wants himself to be searched by Magistrate or Police Personnel and on his consent vide Ex.P-10 searched was made by the police on which contraband was seized from the dickey of his motorcycle. PW-8 has categorically stated that since there was apprehension of accused being escaped he after preparing panchnama sent a message through wireless to the concerned Sub-Divisional Officer and proceeded for the place of occurrence. Thus, considering the facts and circumstances of the case, and the evidence

of aforesaid witnesses which remained un rebutted in cross-examination. Compliance of Sections 50,41 and 42 by prosecution stands duly proved. PW-4 Mohan Singh Painkara states that on the date of incident while he was returning to his house at about 5 pm, on the way he saw some Police Personnel and other persons including the appellant who was bleeding from forehead.

10. PW-6 Ram Shankar Soni has stated that the accused gave one packet of Ganja from his motorcycle which was seized by the police. PW-8 Prithvi Dubey, Investigating Officer has stated that after receiving secret information he proceeded for the place of occurrence along with staff, apprehended the accused, obtained consent of the accused for his search vide Ex.P-4 and on search recovered Ganja from Dickey of the motorcycle which was found 2 Kg after weighment. He states that the appellant was given notice Ex.P-10 for producing documents regarding possession of the said Ganja but the appellant failed to produce any such document. Thereafter, sample of 30 gm was drawn for chemical examination and sealed. Statements of the witnesses were recorded and spot map Ex.P-11 was prepared. As per FSL report Ex.P-15 the contraband seized from the appellant was found to be Ganja. After seizure of the contraband and motorcycle vide Ex.P-5 information about the same was immediately given to the Higher Authorities vide Ex.P-6, Ex.P-7, Ex.P-8 and Ex.P-9. The appellant/accused also sustained injury while riding the motorcycle which has been proved by the Doctor PW-1 Y.K. Sharma.
11. The trial Court considering the over all evidence available on record convicted the appellant under Section 20 of the Act which appears to be just and proper and needs no interference by this Court.
12. So far as sentence part is concerned, considering the fact that at the

time of incident, the appellant was 31 years of age, the incident occurred on 05.11.1996 i.e. about 24 years ago, there is no criminal antecedent of the appellant, he has already remained in jail near about seven months, this Court is of the opinion that ends of justice would be served, if the appellant is sentenced to the period already undergone by him.

13. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 20 of the Act, the sentence imposed upon him is reduced to the period already undergone by him. However, the fine amount as imposed by the trial Court with default stipulation shall remain intact. The appellant is reported to be on bail, therefore, his bail bond shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh