

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 3002 of 1998**

Rajaram S/o. Jhurai Nai Thakur, Aged about 50 years, Resident of village Kotrahi, Police Station Basantpur, District Sarguja (Ambikapur) (M.P.) (now C.G.)

---- **Appellant**

Versus

State of M.P. through P.S. Basantpur, District Sarguja (Ambikapur) (M.P.) (now Chhattisgarh)

---- **Respondent**

 For Appellant : Mr. A.K. Yadav, Advocate
 For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

04.09.2019

1. This appeal is preferred against the judgment of conviction and order of sentence dated 27.11.1998 passed by the Second Additional Special Judge Ambikapur, Sarguja (M.P.) in Special Criminal Case No. 183/1996, wherein the trial Court convicted the accused/appellant under Section 20 (B) (1) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 5,000/- with default stipulations.
2. As per prosecution case in brief is that, on 23.08.1996 K.M.S.Khan (PW-6) received a secret information from the informer that one person namely Rararam Nai was involved in selling of contraband Ganja. He prepared the panchanama and sent this information to his higher authorities at Wardrafnagar. Thereafter, Police Party including independent witnesses rushed to the spot, prepared test

purchase panchanama Ex.P-2 and apprehended the accused/appellant and gave notice Ex.P-3 to him under Section 50 of the Act of 1985. Vide Ex.P.4 the accused/appellant has given his consent to be searched by P.W.6- K.M.S.Khan. The Appellants consented for their search by KMS Khan (PW-6) himself. During search one plastic packet containing 30 pieces of Ganja tied with *Dhoti* worn by him along with Rs. 35/- were seized from the appellant. The same was identified to be ganja vide Ex.P-5. After recovery of the ganja and seizure memo Ex.P-6 was made. The seized Ganja was weighed and physically verified vide Ex.P.7. Total quantity of Contraband was found to be 50 grams vide Ex.P.8. Spot-map (Ex.P10) was prepared. Dehati Nalishi (Ex.P14) was recorded. Thereafter, he returned to Police Station Basantpur with the appellant and the seized Ganja. First Information Report (Ex.P-15) was registered against the appellant and sample packet was sent for chemical examination vide Ex.P-17. Acknowledgement of the FSL is Ex.P-18. Report (Ex.P-19) of Forensic Science Laboratory was received in which the samples sent for examination was confirmed to be of Ganja. All legal formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellant in the Court of Second Additional Sessions Judge Ambikapur, wherein the Additional Sessions Judge framed charges as mentioned above to which the appellant did not plead guilty. The Additioal Sessions Judge Ambikapur conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded and after completion of trial, the Additional Sessions Judge considering the material available on

record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel appearing for the accused/appellant submits that there are omissions and contradictions in the deposition of the witnesses. He submits that the panch witness have not supported the case of the prosecution and they have been declared hostile. He submits that the trial Court by not marshaling the evidence in right perspective came to wrong conclusion. Lastly, he submits that the appellant is poor person earning his bread by job of labour and he has already remained in jail about 4 months and he will not commit any other likewise offence in future. In the circumstances, it would be just and proper to punish him for the period already undergone by him.
4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
5. P.W.6- K.M.S.Khan is a person who investigated the matter right from beginning. He deposed on 23.08.1996 he received a secret information from the informer that one person namely Rararam Nai was involved in selling of contraband Ganja. The appellant was apprehended and informed him about his rights for search by any Gazetted Officer or Executive Magistrate or he can be searched by him. He called the independent witnesses and in their presence the appellant was searched. During search he found about 50 grams of ganja in a plastic packet containing 30 pieces of Ganja tied with *Dhoti* worn by him along with Rs. 35/-. This witness has further

deposed that he returned to the police station along with the seized articles and the Appellant. After the return, Crime No. 67 of 1996 was registered in the police station Basantpur vide Ex.P -14. He has further deposed that the seized packets were sent to the FSL vide memo dated 03.09.1996 (Ex.P-17) for chemical examination. Acknowledgement of the FSL is Ex.P-18. FSL report is Ex.P-19. The report is positive.

6. From over all assessment of the evidence, I am of the view that factum of seizure of Ganja is established and there is no provision in the Act for licensing the said articles. Possession itself is made punishable and when the conscious possession of the appellant was proved before the trial Court, the finding arrived at by the trial Court is not perverse and it can not be said that the trial Court has considered irrelevant and extraneous material and it would not be proper to reverse the finding of the court below. Being so, their conviction recorded by judgment impugned is hereby maintained.
7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 21 years ago and the appellant has already remained in jail for about 4 months and deposited the fine amount imposed on him, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his jail sentence is reduced to the period already undergone by him. With the above, the appeal stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE