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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 18/04/2019****Judgment delivered on: 17/05/2019****CRA No. 610 of 2017**

1. Ankush Tobere, S/o Ramchandra Tobere, aged about 32 Years, R/o Village-Sonae, Police-Station-Sonae, District-Ahmadnagar, Maharashtra.
2. Varsha Dhature, D/o Baba Saheb Dhature, aged about 30 Years R/o Village-Singhnapur, Police-Station-Sonae, District-Ahmadnagar, Maharashtra.

---- Appellants**Versus**

- State of Chhattisgarh Through, Police-Station-Basna, District-Mahasamund, Chhattisgarh.

---- Respondent

For the Appellants : Ms. Shivali Dubey, Advocate.

For the State/Respondent : Mr. I. Lakda, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment**17/05/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 27.03.2017 passed by the learned Special Judge, Saraipali (NDPS Act), Mahasamund, District-Mahasamund, Chhattisgarh in Special Criminal Case No.03/2016 convicting the accused/appellants under Section 20(B)(ii)(C) of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (for short 'NDPS Act')

and sentencing them to undergo RI for 10-10 years with fine of Rs.1,00,000-1,00,000/- plus default stipulation.

2. The prosecution case, in brief, is this that on 29.11.2015 ASI N.K. Das PW-15 of P.S.-Basna, who was on patrolling duty, received an information from Informer that ganja is being transported in a car bearing registration No.MH-17/AJ/6803. ASI N.K. Das PW-15 immediately summoned the witnesses and a blockade was created on the road near Saraipali, On arrival of a car bearing Registration No.MH-17/AJ/6803 on the spot, it was stopped. The car then turned and tried to flee from the spot but the police party chased and stopped the car. One male and female were found inside the car. The appellant/accused introduced themselves and informed that the vehicle has been abandoned by driver Shrikant. A notice was served upon appellants/accused under Section 50 NDPS Act against which the appellants gave their consent to be searched by the police party. After initial search of police party and the witnesses, car bearing Registration No.MH-17/AJ/6803 was searched and 31 numbers of big packets and 20 numbers of small packets were recovered from dickey of car. A recovery panchnama ExP-20 was prepared on the spot. After conducting test on the contents of packets, it was found to be ganja. Subsequent to that weighment procedure was carried out. Total weight of ganja was found to be 82 kg. All the articles i.e. ganja, car, mobile set and papers of car were seized vide seizure memo ExP.22. After completion of this procedure, FIR ExP-54 was lodged by ASI N.K. Das PW-15. The articles seized from the spot

were handed over to the Malkhana Muharrir for keeping it in safe custody. Later on, samples of seized contraband were sent for FSL examination from where FSL report ExP-49 was received confirming that contents of the packets to be ganja. The case was investigated and on completion of investigation, charge-sheet was filed before the concerned Court.

3. The appellants were charged with the offence under Section 20(B) (ii)(C) of the NDPS Act. Appellants abjured their guilt and sought trial. The appellants were examined under Section 313 of CrPC, in which they denied all the incriminating evidence available against them, 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 appellants in the manner as mentioned herein above.
4. It is submitted by counsel for appellants that the appellants have been erroneously convicted by the trial Court, without there being any evidence against them. It is reflected from the evidence of the prosecution witnesses, that the appellants were travelling as passengers in the car and the driver had left the car and fled from the spot. It is submitted, that the time mentioned in the various memos of search and seizure have a discrepancy and do not show correct chronology, which indicates that a case is concocted against the appellants. In some of the panchnamas, there is no signature of the appellants which shows that they were not present on the spot when the proceedings was carried out. Apart from that the witnesses

of search and seizure have not supported the prosecution and they have admitted in cross-examination, that they were made to sign all the panchnamas in police-station. At the same time the procedure of making the homogeneous mixture is also not proper and it was done at the time when the raid was conducted, which was not in accordance of provision under the Act. It is also argued that the provision under Section 50 of the Act has not been complied with. There is no support from any independent witnesses. There is discrepancy with respect to weight of ganja in the statement of Investigating Officer Jaggu Ram PW-14 and seizure memo ExP-22. There are other discrepancies in the statements of witnesses as well regarding model & make of car.

Reliance has been placed on the judgment of Allahabad High Court in Sita vs. State of U.P. reported in 2018 SCC OnLine All 4503 and Punjab & Haryana High Court in Manjit Kaur @ Billo vs. State of Punjab reported in 2018 SCC OnLine P&H 1343. The appellants has also relied on the judgment of Division Bench of this Court in CRA No.655 of 2011(Amarnath Soni & others vs State of Chhattisgarh)decided on 6.12.2018. Another judgment of Division Bench of this Court in CRA No.462 of 2009 (Kripa Sindhu vs. State of Chhattisgarh) decided on 28.4.2014. Relying on the judgment of this Court in CRA No.12 of 2015 (Vijay @ Vikki & another vs State of Chhattisgarh) decided on 9.1.2017, hence, it is prayed that appellants be acquitted of charge. In alternative, it is submitted that if this Court is not inclined to allow this appeal then, in the given facts and circumstances of case, the sentence imposed upon the

appellants may be reduced as it is too harsh.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also arguments advanced by learned counsel for the appellants. It is submitted that prosecution has proved its case beyond reasonable doubt, therefore, there is no scope of interference in the impugned judgment.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is whether the prosecution has been able to establish guilt of accused/appellants, beyond reasonable doubt, on the basis of evidence adduced by it?
8. ASI N.K. Das PW-15 has stated that when he was on patrolling duty, he received information from one informer, that some persons are transporting ganja in a car bearing Registration No.MH-17/AJ/6803. He immediately informed his colleague about this information and summoned witnesses. He has stated that as there was no time to obtain search warrant, therefore, he sent an intimation vide Exp-8 to his superior authority, along with copy of information panchnama Exp-7. He has stated, that a blockade was created at bus stand of Village-Bhukhel, at about 5 am in the morning one Indigo Car bearing Registration No.MH-17/AJ/6803 arrived there, however, seeing the police personnel the car took a turn and tried to flee, which was chased and the car was found standing in Village-

Geedhapara occupied by one male and female. On inquiring the male introduced himself as Ankush and the female introduced herself as Varsha Dhatore and they informed that Shrikant, driver of vehicle, has fled from the spot. Some packets were found lying at the back seat of the car. Accordingly, a notice under Section 50 the Act vide ExP-13 was served upon the appellants/accused persons. The appellants consented for their search by the police party vide ExP-15 & 16 and thereafter police party gave their search to the appellants vide ExP-1 and 18 and nothing objectionable was found. Separate panchnama ExP-17 was prepared. He has stated that on searching the car, 31 numbers of big packets and 20 numbers of small packets in total 51 packets containing ganja were found lying in dickey the of the car. Search panchnama ExP-19 and recovery panchnama ExP-20 was scribed on the spot. Contents of packets were tested by smelling and burning and it was found to be ganja, regarding which panchnama ExP-21 was recorded. He has stated that weighment procedure was carried out. The electronic balance was firstly verified vide ExP-10 and thereafter all the packets were weighed and found to be 82 kg, weighment panchnama ExP-11 was recorded. Homogeneous mixture of all the ganja was prepared vide ExP-22. Out of this homogeneous mixture, two samples of 100 gm each were prepared, which were packed and sealed vide panchnama ExP-24. Seizure of all the articles including the car, mobile phone and papers of the car and ganja was made vide ExP-23. Panchnama of sealing was also separately prepared vide ExP-24. He has stated that thereafter the appellants had been arrested

on the spot. FIR ExP-54 was lodged in the police-station. He has also stated that he handed over all the articles of seizure to the Malkhana in-charge and received acknowledgment vide ExP-37. In cross-examination, his statement regarding procedure he has conducted has remained totally un rebutted. He has admitted that notice was served upon the appellants on 5.25 am in the morning and also admitted that no alternative was provided to the appellants regarding the search to be made. In this case, although the notice was served upon the appellant under Section 50 of NDPS Act, which was not at all a requirement, for the reason that the recovery of contraband has been made from the car and not from the persons of the appellants, therefore, compliance of Section 50 of the Act was not at all necessary in this case. It has been clearly held in State of Himachal Pradesh vs. Pawan Kumar reported in 2005 AIR SCW 2154, by a three judge Bench of Supreme Court.

9. ASI N.K. Das PW-15 has though admitted in his cross-examination that ExP-1 the search memo in which fact of search of police party by the appellant was recorded, does not contain signature of appellants but it is not material in any sense. Firstly there was no requirement of compliance of Section 50 of the Act in this case and secondly the huge quantity of contraband that has been recovered in this case is itself sufficient to rule out fraudulent search of the accused persons, therefore, this admissions made by this witness is of no consequence. No specific question has been put to this witness regarding difference of time in various panchnamas which

was needed to be put to him to explain the same if the defence wanted to use this discrepancies. At the same time, merely because there are certain discrepancies in various panchnamas, it cannot be said that proceedings taken up by ASI N.K. Das PW-15 is totally false, particularly when the independent witnesses of search and seizure Ragheram PW-7 has admitted his signature in all the panchnamas and also stated about the arrest of the appellants was made on the spot. However, he has been unable to identify the accused persons. The admissions made by this witness clearly suggests that the procedure had taken place. In cross-examination, he has though admitted, that no procedure was taken up in his presence, therefore, he cannot be held to be a reliable witness, but he has not denied his signatures in all the panchnamas. Similarly another independent witness Jaggu Ram PW-3 has also admitted signatures in various panchnamas, but he has not made any other statement in favor of prosecution. Admission of signature by this witness is the only statement made by them, which is support to the prosecution for showing their presence, in the procedure taken up. No question has been put to ASI N.K. Das PW-15 in his cross-examination, suggesting that he had previous animosity or grudge with appellants, therefore, there is no reason to hold that N.K. Das PW-15 has deposed falsely before the Court.

10. Constable Ritu Dhidhi PW-1 had searched female accused. Constable Bhupesh Kumar Tandon PW-2 was a messenger for depositing the sample in FSL, Raipur. Patwari Tomesh Dhruw PW-3

prepared the spot map ExP-5. Constable Krishna Kumar Yadav PW-4 was a messenger for sending intimation of complete procedure of raid to SDOP Office. Head Constable Shoukilal PW-5 was the Clerk in the office of SDOP, Saraipali, who received the informations. Kotwar Nirmal Bagh PW-6 is witness of weighment procedure and his statement has remained unrebutted. Head Constable Hemant Nayak PW-9 has stated about various entries that were made in the Station House Diary(SHD) regarding which there is no specific dispute.

11. Constable Digrilal PW-10 was a member of the team. He has supported the version of ASI N.K. Das PW-15. In cross-examination, his statement remained unrebutted and there is no other admission made by him so as to make out that there is any contradictory statement made by him. Constable Hemant Nayak is also witness of the same team and he has supported ASI N.K. Das PW-15. Executive Magistrate Prafull Vishwakarma PW-12 has conducted the weighment procedure of the ganja which was taken out from the Malkhana of the police-station-Basna and in that procedure two separate samples were also again prepared and sealed vide ExP-14. His statement has also remained unrebutted. in cross-examination. It was argued, that there is discrepancy in the weights mentioned by the witnesses. This discrepancy cannot be held to be of any significance. The quantity of contraband in both the cases is exceeding the limit for commercial quantity, therefore, this argument has no substance.

12. S.I. S.S. Thakur PW-14 has conducted rest of the investigation, regarding which he has stated before the Court and there is no such other admission made by him so as to contradict or rebut the evidence of proceedings that have been brought on record.

13. The grounds raised by the appellants that they were only travelers in the car is only a submission made in the argument. N.K. Das PW-15 has stated that while identifying themselves they told him, that the driver has left the vehicle and fled from the spot, but there is no statement made by them to N.K Das PW-15, that they were only travelers in that car. The other witnesses on the spot Radheram PW-7 has not identified the appellants and no question was put to him in defence regarding status of the appellants in the car . Similarly another independent witnesses Jaggu Ram PW-14 was also not questioned on this point, therefore, the status of appellants was on travelers in the car cannot be presumed. On the contrary, Section 25 of NDPS Act provides for presumption of culpable mental status of the accused persons. The ground for presumption is available for the reason according to the evidence on record the packets of ganja were lying on the back seat of the case and in the dickey which further gives support to the presumption of culpable mental status of the appellants.

14. After closely scrutinizing all the evidence of prosecution witnesses, I am of this opinion that deposition of ASI N.K. Das PW-15 is totally

reliable and trustworthy. There is no such rule and law that the evidence of Investigating Officer or the police personnel has to be disbelieved as has been held in Baldev Vs. State of Haryana (2016) 1 C.J.L.J. 163 and Tahir Vs State of Delhi (1996) 3 SCC 338, therefore, the prosecution has proved its case beyond reasonable doubt that the appellants were engaged in transporting contraband which was founded to be ganja, therefore, the conviction against the appellant is well found which need no interference.

15. Accordingly, the appeal is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha