

NAFR
HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 272 of 2010

Judgment reserved on 11-01-2019

Judgment delivered on 30 01-2019

- Ramesh Singh Bais S/o Jaleb Singh Bais aged about 55 years, R/o Daniya Police Station Chhuikhadan, District Rajnandgaon (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Chhuikhadan, District Rajnandgaon (CG).

---- Respondent

For Appellant	:	Mrs. Indira Tripathi, Advocate.
For respondent/State	:	Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 18-3-2010 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Rajnandgaon, in Special Case No. 3 of 2009, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per prosecution case, Police Officer namely G.C. Pati (PW/12) Officer Incharge of Police Station Chhuikhadan, District Rajnandgaon received secret information from informer/Mukhbir on 14-3-2009 at 3.00 pm that the appellant had kept a large quantity of contraband article Ganja in a room of his house situated at village Daniya to sell the same in rural area Information was recorded in Rojnamcha Sanha and information was sent to superior officer. Two independent witnesses were called and thereafter police personnel and other witnesses reached to the house of the appellant and after search 33 bags were found lying in the house of the appellant. Two samples of 50 grams each were separated from each bag which was sealed and specimen seal was also prepared. Seized articles were entrusted to Incharge of Malkhana of the said Police Station. Samples were sent for chemical examination to FSL where test of Ganja was found positive. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.
3. The appeal is preferred on the following grounds.
 - i) PW/2 Santosh and PW/5 Arun have deposed that when they were standing to see the gate being constructed over the road of their village at Gabhra, one Police van came there and police persuaded to

accompany them to go to the village Daniya, therefore, it is not established that both witnesses were called by the Police Officer before proceeding towards the house of the appellant. No Mukhbir information was produced in writing, therefore, compliance of Sections 42 of the Act, 1985, is not established.

- ii Seizure of bags were not proved by the witnesses, therefore, seizure part is also not established against the present appellant.
- iii) There is no evidence about the custody of the contraband from the date of its seizure till its production before the Court and provision of Section 50 of the Act, 1985 has not been followed, therefore, case appears to be fabricated at the instance of the Investigating Officer, therefore, conviction of the appellant is liable to be set aside.
- iv) Bags of contraband article were found in courtyard of the house and it is not the exclusive possession of the appellant.
- v) The Investigating Officer and informer are the same person and Panchnama witnesses have not supported the version of the prosecution.

In support of the arguments, he placed reliance on **Gorakh Nath Prasad vs. State of Bihar decided by Hon'ble Supreme Court in Criminal Appeal No. 2184 of 2017.**

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.
6. Sub Inspector of Police Station, Chhuikhadan, G.C. Patri (PW/12) deposed before the trial court that he received information from one informer that on 14-3-2009 that the appellant was having in his possession huge quantity of contraband article Ganja. Information was recorded as per Ex.P/9 and one panchnama (Ex.P/10) was prepared for not getting search warrant. This information was sent to Sub Divisional Officer (Police). as per Section 42 of the Act, 1985 and information is Ex.P/37. Thereafter, he reached to the spot along with police personnel and other independent witnesses . He informed the appellant about his right to be searched by any Gazetted Officer or Magistrate. When he searched the house of the appellant, he found 33 bags in which contraband article Ganja was kept and after weight it is found to be 1017 kgs. Two samples of 50 grams each were separated from the said article and sealed separately. As per version of this

witness seized articles were handed over to Head Constable who was Incharge of Malkhana for safe custody as per Section 55 of the Act, 1985 and information regarding seizure of all the proceedings was sent to Sub Divisional Officer (Police) as per Ex.P/47. From the evidence of this witness, it appears that provision of Section 57 of the Act, 1985 is also complied with.

7. From the evidence of PW/9 Amritlal, it is established that he received samples and deposited the same in FSL and obtained receipt thereof vide Ex.P/32. It is further deposed that contraband articles were weighed and quantity of the entire article is found to be 1017 kgs. Version of Police Officer is supported by version of Santosh Kumar (PW/3). Head Constable .Dhaneshwar Dhruv (PW/8) deposed that seized articles were kept in Malkhana for safe custody which is mentioned in Malkhana register brought by this witness. Looking to the entire evidence and further looking to the report of FSL in which test of Ganja was found positive, the trial Court opined that the appellant was in exclusive possession of contraband article Ganja to the tune of 1017 kgs which is much more than commercial quantity.
8. In the present case investigation is done by the Police Officer/Inspector Rajendra Prasad Mandavi (PW/11) who is

not the informer of the offence. Informer is some private person upon whose tips information was recorded by Inspector G.C. Pati (PW/12), therefore, in the present case, it is not established that informer and investigating Officer are the same person. Considering all the facts and evidence on record, this court is of the opinion that the case law cited by the appellant is distinguishable from the facts of the present case.

9. From the evidence of Head Constable Dhaneshwar Dhruv (PW/8) it is established that property was kept in safe custody of Malkhana, therefore, it cannot be said that the property was not kept in safe custody of Malkhana. Huge quantity of contraband article was found in the house of the appellant and he has not explained regarding storing of the contraband article in his house. At any rate, he is in exclusive possession of the said contraband article. True it is that Panchnama witnesses have not supported the version of prosecution, but they have not rebutted the version of Police Officer that the Police Officer investigated the house of the appellant and found contraband article. In view of this, argument advanced on behalf of the appellant is not sustainable. From the charge-sheet it appears that property seized in the present case is forwarded to the court and the

trial Court after assessing the entire evidence recorded finding of conviction which is not liable to be reversed by this Court while invoking jurisdiction of the appeal.

10. Illegal possession of quantity of Ganja 1017 kgs which is commercial quantity, therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed.

11. Heard on the point of sentence.

The trial Court has awarded minimum sentence and less than minimum cannot be awarded, therefore, sentence part is also affirmed.

12. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no fresh order for his arrest etc., is required.

**Sd/-
(Ram Prasanna Sharma)
Judge**

Raju