

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 245 of 2002**

- Mohan S/o Mahetar, aged about 25 years, occupation agriculture, resident of Dolhapara Adaga, Thana, Keshkal, District Jagdalpur, C.G.

----Appellant

Versus

- State of C.G., through P.S. Parasgaon, District Jagdalpur, C.G.

---- Respondent

For Appellant	Ms. Nirupama Bajpai, Advocate.
For Respondent/State	Mr. Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05.09.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 03.01.2001 passed by the Special Judge (NDPS Act), Bastar at place Jagdalpur, C.G. in Special Case No.55/2001, convicting the accused/appellant under Section 20(B)(i) of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing him to under R.I. for one year and six months and to pay a fine of Rs.2,500/-, in default of payment of fine additional R.I. for four months.
2. As per prosecution case, on 24.09.2001, A. Nuruty, SHO posted in Parasgaon (Police Station), received a secret information (Ex.P-1) that one person is carrying Ganja in his bicycle. The said information was reduced to writing in Rojnamchasanha vide Ex.P-13 and forwarded to SDOP, Kondagaon. The police party

along with witnesses went to the spot, apprehended the accused, gave him notice under Section 50 of the NDPS Act vide Ex.P-2 and made him aware of his legal right, on which he consented to be searched by the police. Personal search of the police party and the witnesses was also made by the appellant and nothing was found. On search of the bicycle which the appellant was carrying Ganja like substance was recovered and on being examined, it was found to be Ganja vide Exs. P-4 & P-5. On weighment being done of the contraband it was found to be 2.450 Kg Ganja. Two samples, each of 50 gms, were drawn from the said contraband and seizure memo was prepared, the samples were duly sealed and specimen of seal was affixed on the seizure memo Ex.P-8. Accused was arrested vide Ex.P-9. Intimation of the entire proceedings was forwarded to Superior Authority. After reaching police station, FIR (Ex.P-19) was registered against the accused/appellant under Section 20(B) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination vide Ex.P-20, which confirms the seized contraband to be Ganja vide Ex. P-21. After investigation, charge sheet was filed against the accused/appellant under Section 20(B) of the NDPS Act. The trial Court framed charge under Section 20(B)(i) of the NDPS Act against him. Accused denied the charge framed against him and prayed for trial.

3. So as to hold the accused/appellant guilty, the prosecution examined 6 witnesses in all i.e. PW-1 Soma, PW-2 Jageshwar, PW-3 Sukhranjan, PW-4 R.K. Jha, PW-5 A Nuruty and PW-6

Jaidev Boi. 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. No witness was examined in his defence.

4. Learned counsel for the appellant submits that the procedure prescribed under NDPS Act is not followed by the Investigating Officer. In this case the independent witnesses have not supported the prosecution case and turned hostile. Only on the basis of statements of Official witnesses, the accused/appellant cannot be convicted. He further submits that the property seized from the accused was not kept in the safe custody. In this case looking to the scope of manipulation of the property alleged to be seized from the appellant, learned trial Court has wrongly convicted the appellant.
5. Learned counsel for the respondent/State supports the impugned judgment.
6. Heard learned counsel for the respective parties and perused the material available on record.
7. As per PW-5 A. Nuruty Sub-Inspector, while supporting the prosecution case has stated that on 24.09.2001 on receiving secret information that one person is carrying a Ganja in his bicycle, recorded the said information in Mukhbir Panchnama as Ex.P-1. Thereafter, he lodged Ex.P-13 Roznamcha on 24.09.2001 and also sent the same to the Superior Officer as mentioned in Ex.P-15. After information given to the Superior Authority he along with staff and the witnesses proceeded to the

spot where they found the accused/appellant. On being enquired he disclosed his name as Mohan son of Mehtar. He was given notice under Section 50 of the Act and made aware of his legal rights. On the consent of the appellant, his search was made by him. Prior to his search, personal search of the police party and the witnesses was also made by the appellant, on which nothing was found from their possession. However, on search of his bicycle carried by the appellant Ganja like substance was recovered, which on being examined by smelling and rubbing was found to be Ganja. After weightment, the contraband was found to be 2.450 Kg. Thereafter, two samples, each of 50 gms, were drawn from the said contraband, seizure memo was prepared, the samples were duly sealed and specimen of seal was affixed on the seizure memo, intimation of the entire proceedings were forwarded to the Superior Authority, SDOP, Kondagaon, contraband including the samples were deposited in Malkhana, samples were sent to FSL (Ex.P20) for chemical examination with intact seal and as per report of FSL it was confirmed to be Ganja (Ex.P21). The property seized from the accused was kept in safe custody as per Ex.P-23 it is also proved by the PW-5 A. Nuruty. There is no reason to disbelieve the statement of PW-5 A. Nuruty, his statement is uncontroverted. As per PW-6 Jaidev, the seized articles were divided into packets and remaining part of articles were kept in safe custody as per Ex.P-23. Looking to the statement of PW-1 Soma, he was declared hostile but he admitted his signatures on all the documents as per Ex.P-1 to Ex.P-10. Definitely in this case both

independent witnesses PW-1 Soma and PW-2 Jageshwar were declared hostile and they have not supported the prosecution case, but they have admitted their signatures on Ex.P-1 to P-10. PW-3 Sukhranjan also proved this fact that he weighed the samples and were prepared by the Police Officer. PW-4 R.K. Jha also supported the statements of Soma Kumar and Jageshwar as per Ex.P-11 and Ex.P-12. It cannot be stated as a rule of law that a police officer can or cannot be a sole eyewitness in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

8. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department

of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#).]

9. In this case, the defence has not alleged that the police officers, who are witnesses in this case and conducted investigation against the appellant had any enmity or ill-will against the appellant for his false implication in this case. Therefore, considering the overall facts and circumstances of the case, the oral and documentary evidence available on record, this Court is of the opinion that the trial Court has not committed any illegality or infirmity in holding the appellant guilty under Section 20(B)(i) of the NDPS Act.
10. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. Since the appellant is reported to have been set free after undergoing the entire sentence, there is no requirement of passing any order for his arrest or surrender etc.

Sd/-
Gautam Chourdiya
Judge