

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 818 of 2002**

- Babalu Porwal S/o Arun Porwal Christian aged about 23 years Labour resident of village Ramgir Police Station- Ramgir, District- Ganpati (Orissa).

----Appellant**Versus**

- State of Chhattisgarh, through : Police Station Grang, Raipur District- Raipur (Now in C.G.).

---- Respondent

For Appellant : Shri Gurudev I. Sharan, Advocate.
For Respondent/State : Ms. Seema Dixit, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****18.09.2019**

1. No one appeared on behalf of the appellant/accused, when the matter is called. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee on behalf of the appellant/accused.
2. Shri Gurudev I. Sharan, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court, is ready to argue the matter. Therefore, this Court has appointed Shri Gurudev I. Sharan, Advocate to argue the matter on behalf of the appellant/accused. Registry is

directed to inform the High Court Legal Services Committee in this regard for doing the needful.

3. This appeal arises out of the judgment of conviction and order of sentence dated 11.01.2002 passed by the Special Judge (N.D.P.S. Act), Raipur in Special Criminal Case No. 17/01, convicting the accused/appellant under Section 20(b)(1) read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act (in short "the Act") and sentencing him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2,000/- with default stipulation.

4. As per prosecution case, on 16.3.2001 Anand Kumar Arya, Assistant Sub Inspector received information from informant vide (Ex.P/1) that one person namely Bablu Gajpati is standing, near Gurudwara Chowk carrying cannabis (*Ganja*) in a kit bag and is trying to sell the same. The said information was reduced to writing in Rojnamchasanha vide Ex.P/9-C and forwarded to the Superior Officer Superintendent of Police, Raipur vide Ex.P-3.

The police party along with witnesses went to the spot, apprehended the accused, gave him notice (Ex.P-11) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police vide Ex.P-12. Personal search of the police party and the witnesses was also made by the appellant and nothing was found vide Ex.P/13. On search of the kit bag which the appellant was carrying Ganja like substance was recovered and on being

examined by smelling and burning vide Ex.P-14, it was found to be Ganja vide Ex. P-15. On weighment being done of the contraband it was found to be 4.900 kg vide Ex. P-16. Two samples, each of 50 gms, were drawn from the said contraband and seizure memo (Ex.P-17) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo.

5. The accused was arrested vide Ex.P-18 and spot map was prepared vide Ex.P-19. Intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Civil Line, Raipur. After reaching police station, FIR (Ex.21) was registered against the appellant under Section 20(b) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 21.03.2001 with intact seal and report of FSL is Ex.P-8, which confirms the seized contraband to the Ganja.

6. After investigation, charge sheet was filed against the accused/appellant under Section 20(B) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charge under Section 20(B) (1) read with Section 8 of the NDPS Act against him.

7. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No one examined as defence witness on behalf of the accused/appellant.

8. 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 opening paragraph of this judgment.

9. Learned counsel for the appellant submits that the as the accused/appellant is the resident of Odisha, he can not understand *hindi* language and, therefore, he has been falsely implicated in the crime in question. He also submits that Investigating Officer did not comply with the mandatory provisions of Sections 41, 42 and 50 of the Act while making seizure of the *Ganja*. He also submits that the seizure and other proceedings under the NDPS Act are performed in presence of Makardhwaj (PW-2) and Gopal (PW-7) but both the witnesses have not supported the case of the prosecution and have been declared hostile. He also submits that fair investigation has not been done by the Investigating Officer while making seizure of contraband article and other proceedings against the appellant and, therefore, the appellant is entitled to be acquitted of the charges levelled against him.

10. Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions of Sections 41,42 & 50 of the NDPS Act have been duly complied with by the prosecution while making seizure of alleged *Ganja*, such as, notice under Section 50 of the NDPS Act was given to the appellant, thereafter, personal search of the police party and the

witnesses was also made by the appellant and then consent was given by the appellant, and therefore, the appellant has rightly been convicted & sentenced by the Trial Court.

11. I have heard learned counsel appearing for the parties and perused the material available on record. .

12. It is not disputed by both the parties that the accused/appellant has signed the procedural documents in Oriya language and when the trial Magistrate framed the charges against the appellant, the same was in *hindi* language and the accused denied it in *hindi* language. At the time of recording of 313 of Cr.P.C. statement of accused/appellant, he answered all the question in *hindi*, therefore, the contention made by learned counsel for the appellant that accused/appellant does not know the *hindi* language and the opportunity of fair trial was not given to him has no substance.

13. In this case both the independent witnesses namely Makardhwaj (PW2) & Gopal (PW7) of the seizure and other relevant documents are declared hostile and they have not supported the case of the prosecution.

14. Assistant Sub Inspector - Anand Kumar Arya (PW5) received a telephonic information that one person namely Bablu Gajpati is standing near Gurudwara Chowk carrying cannabis (*Ganja*) in a kit bag and is trying to sell the same. Anand Kumar Aarya (PW05) categorically proved all the document when he received information from the informant as per Ex. P/1 thereafter

he lodged complainant on Rojnamchasana vide Ex. P/9-C just thereafter he informed the higher authority regarding the information received from the informant vide Ex. P/3 and thereafter alongwith the witnesses and staff he moved for search as per Ex. P/10 and when he reached near Station Road Gurudwara Chowk he also accompanied two independent witnesses namely- Makardhawaj (PW02) & Gopal (PW07) and informed them about the information received from the informant. At the place of incident he gave the notice (Ex.P-11) under Section 50 of the NDPS Act to the appellant and made him aware of his legal rights, on which he consented to be searched by the police vide Ex.P-12. Personal search of the police party and the witnesses was also made by the appellant and nothing was found vide Ex.P/13. On search of the kit bag which the appellant was carrying Ganja like substance was recovered and on being examined by smelling and burning vide Ex.P-14, it was found to be Ganja vide Ex. P-15. On weightment being done of the contraband it was found to be 4.900 kg vide Ex. P-16. Two samples, each of 50 gms, were drawn from the said contraband and seizure memo (Ex.P-17) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. The accused arrested vide Ex.P/18 and spot map Ex. P/19 is prepared and after returning from the place of occurrence he lodged complainant on Rojnamchasana vide ExP/20 and lodged FIR vide Ex. P/21 and kept the seized article in Malkhana vide Ex.P/22 and recorded the

statements of the witness and signed & proved the documents by him (Anand Kumar Arya). Thus, it appears that the statutory provisions as required under 50 of the NDPS Act has been followed.

15. Makardhwaj (PW2) & Gopal (PW7) have admitted that they had signed all the relevant documents i.e. Ex. P/11 to P/18 but they declared hostile.

16. Kishore Kumar Soni (PW03) proved the information (Ex. P/1) received from the informant he also proved Exs. P/3 and P/4 documents and has also supported the evidence of Anand Kumar Arya (PW5). There is no contradiction or omission in the statement of this witness.

17. Brajlal Sahu (PW04) has proved Exs. P/5, P/6, P/7 & Ex.P/8 and no any questions or issues raised by the prosecution to this witness in his cross-examination.

18. Looking to the entire statements of Ram Vilash Verma (PW01), Kishore Kumar Soni (PW03) and Brajlal Sahu (PW04) and Anand Kumar Arya (PW05) the procedure prescribed under Section 50 of NDPS Act is followed by the Investigating Officer and there is no reason to disbelieve the Investigating Officer and Police constable.

19. It cannot be stated as a rule of law that a police officer can or cannot be a reliable 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.

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. **[Pramod Kumar V. State (GNCT) of Delhi]** reported in **AIR 2013 Supreme Court 3344**].

20. In the present case, though some of the independent witnesses (PW02 & PW07) have not fully supported the prosecution case but the other witness, though police personnel, have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution

defence has utterly failed to elicit anything from them which could suggest that they had any interest or enmity with the accused/appellant for his false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

21. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding him guilty under Section 20 (b) (x) of the NDPS Act cannot be faulted with and the same are hereby affirmed.

22. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to have been released from jail after serving out the entire sentence imposed upon him. Therefore, there is no need to pass any further order.

Sd/-

(Gautam Chourdiya)
Judge