

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.918 of 2002**

Shivcharan alias Nanki Baba, son of Shri Parkhit Sahu, aged about 26 years, occupation agriculturist, resident of Village Banayya, Police Station Sitapur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Sitapur, District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Shri Sushil Dubey, Advocate
For Respondent	:	Shri Shubham Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

16.12.2019

1. The instant appeal has been preferred against the judgment dated 31.7.2002 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (henceforth 'the Act'), Ambikapur in Special Criminal Case No.105 of 1999, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(i) of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation

2. Prosecution case, in brief, is that on 23.6.1999, Sub-Inspector Manoj Kumar Singh (PW2) received a secret information that the Appellant was in possession of an illegal substance Ganja. He prepared a Mukhbir Suchana Panchnama (Ex.P3) and in compliance of Section 42 of the Act forwarded the said information

to the higher officer, i.e., the S.D.O. (P), Ambikapur vide Ex.P4. He reached the spot with police staff and panch witnesses. There, he caught the Appellant and gave him a notice (Ex.P7) under Section 50 of the Act. The Appellant consented to be searched by Sub-Inspector Manoj Kumar Singh (PW2) himself. During search of the Appellant, Ganja, which was kept in a polythene bag, was recovered from the pocket of his full pant. On being weighed, quantity of the recovered Ganja was found to be 75 Gms. He seized and sealed the recovered Ganja on the spot. Thereafter, he returned to the police station and deposited the seized articles in the Malkhana and obtained an acknowledgment thereof (Ex.P21). The seized Ganja was sent to the Forensic Science Laboratory for chemical examination vide Ex.P18. FSL report is Ex.P20 which is positive. He also sent information of the complete action taken to the higher officer vide Ex.P16. On completion of the investigation, a charge-sheet was filed against the Appellant. Charge was framed against him.

3. In support of its case, the prosecution examined as many as 6 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded false implication. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that without there being any clinching evidence on record, the Trial Court has wrongly convicted the Appellant. Mandatory provision of Section

55 of the Act is not duly complied with. At the time of seizure (Ex.P10), seal of "M.K. Singh M.P.P." was affixed on the seized article, but, according to the FSL report (Ex.P20), seal of "M.P. Singh M.P." was affixed on the packet in which Ganja was sent to the FSL. Thus, it is not established that the Ganja which was seized at the spot was itself sent to the FSL for chemical examination.

6. Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Salikram (PW4) and Mohd. Ismail Khan (PW5) are the witnesses before whom the entire proceeding was conducted by the Investigating Officer, but both these witnesses have not supported the case of the prosecution and turned hostile.
9. Constable Markandey Mishra (PW1) is the witness who received the information on 23.6.1999 sent in compliance with the provision contained in Section 42 of the Act.
10. Head Constable Ganeshram (PW3) is Malkhana Moharrir of Police Station Sitapur. He has deposed that he had received the seized article deposited in Malkhana and given an acknowledgment thereof (Ex.P21). He has further deposed that on 30.6.1999, he had sent the seized Ganja to the FSL for chemical examination through Constable No.851. This witness has admitted that there is no mention in the Malkhana register that what seal was affixed on

the packet of the seized Ganja.

11. Sub-Inspector Manoj Kumar Singh (PW2) is the witness who investigated the offence in question. He has deposed according to the case of the prosecution. In paragraph 14 of his examination, he has deposed that after registration of the crime, he had deposited the seized Ganja in Malkhana in sealed condition. This witness has also deposed that when he sealed the seized Ganja, at that time, he had affixed a specimen seal in the seizure memo (Ex.P10). A bare perusal of the seizure memo (Ex.P10) reveals that in the said seizure memo, seal of "M.K. Singh M.P.P." was affixed, but from perusal of the FSL report (Ex.P20), it reveals that in the packet of Ganja which was received by the FSL for examination, seal of "M.P. Singh M.P." was affixed. In these circumstances, a serious doubt arises whether the Ganja which was sent to the FSL for chemical examination was the same which was seized at the spot itself. Therefore, the whole case of the prosecution fails. The Appellant is entitled to get benefit of doubt.
12. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
13. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge