

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 564 of 2003

Reserved on : 14.10.2019

Delivered on 04-12-2019

Parvati Bai, W/o Inder Mahara, aged about 32 years, Occupation- Labourer,
R/o Panara Para, Jagdalpur, District- Bastar (C.G.) **---- Appellant**

Versus

State of Chhattisgarh.

---- Respondent

For Appellant : Mr. Samir Singh, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 10.04.2003 passed by Special Judge (NDPS Act), Bastar at Jagdalpur (C.G.) in Special Case No. 58/2002, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 3 years and fine of Rs. 6000/- with further default stipulations.
2. As per case of the prosecution, on 28.10.2002 at about 2:50 p.m., Sub-Inspector of Police Station- Nagarnar namely Alim Khan (PW-5) received information that one lady holding a nylon bag is standing near road of Village- Malgaon in which she carried ganja for sale. After receiving the information, the same was transmitted to Deputy

Superintendent of Police, Jagdalpur through Constable No. 25 namely Gajadhar Pandey, thereafter, he proceeded with staff for further investigation. The said officer found the appellant and searched her bag in which 5 kg. & 100 grams of ganja was found which was seized and kept in safe custody of Malkhana. Sample of the same was sent for chemical examination to Forensic Science Laboratory where test of ganja was found positive. The appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Provisions of Sections 42 & 50 of the Act, 1985 were not complied with, therefore, the procedure adopted by the investigating officer is not liable to be acted upon.

(ii) Again, provisions of Sections 52, 55 & 57 of the Act, 1985 were also not complied with, therefore, conviction of the appellant is liable to be reversed.

(iii) Constable- Phool Dev Lakada has not proved delivery of ganja to the laboratory for chemical examination, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. To substantiate the charge, the prosecution examined as many as 6

witnesses. Alim Khan (PW-5) who is Sub-Inspector of Police Station- Nagarnar deposed before the trial court that he received information on 28.10.2002 at 14:50 p.m. that one lady was standing with a nylon bag at Village- Malgaon. He recorded this information in Rojnamcha Sanha as per Ex. P/11. Again, he sent this information to Additional Superintendent of Police, Jagdalpur through Constable No. 25 namely Gajadhar Pandey. The information was received in the office of Additional Superintendent of Police, Jagadalpur by Reader namely Prakash Shukla who is Head Constable and gave acknowledgement as per Ex. P/12. He further deposed that after completion of legal formalities, he reached to Village- Malagaon where the appellant was standing with a bag. He served a notice as per Ex. P/2 to the appellant that she may be searched by any Gazetted officer or Magistrate, but she gave consent to be searched by this officer. After searching of the bag, contraband article ganja was found and one Panchnama was prepared as per Ex. P/5. After weighing the said article, it was found to be 5 kg. & 100 grams. As per version of this witness, two samples of 30 grams each was prepared from seized article and it was sealed and sample Panchnama was prepared as per Ex. P/6.

7. Again, the procedures were written in Rojnamcha Sanha as per Ex. P/16 and seized article and samples were handed over to in-charge of Malkhana of Police Station- Nagarnar. Again, information regarding seizure and arrest was sent to Superintendent of Police, Jagdalpur and Additional Superintendent of Police, Jagdalpur as per Ex. P/19.

8. As per version of this witness, sample of seized article was sent to Forensic Science Laboratory through Constable No. 648- Phool Dev Lakada and entry in this regard is made in Rojnamcha Sanha as per Ex. P/23. Acknowledgment of depositing the sample was received as per Ex. P/24 and as per report of Forensic Science Laboratory, test of ganja was found positive as per Ex. P/25. Version of this witness is unrebutted in material point. It is further supported by version of Constable- Smt. Champakali Yadav (PW-1) and Head Constable- Padam Rajaiya (PW-4).
9. Head Constable-Jankush Toppo (PW-6) is in-charge of Malkhana of Police Station- Nagarnar and he deposed before the trial court that he received the seized article and sample was kept in Malkhana. He further deposed that samples were withdrawn from Malkhana by Constable No. 648 and the same was sent to Forensic Science Laboratory, Raipur for chemical examination. Version of this witness is unrebutted during cross-examination.
10. From the entire evidence, it is clear that search of bag was done by the investigating officer. Though, it was not personal search, but notice under Section 50 of the Act, 1985 was given to the appellant which was not required for searching of bag. Again, seized article was taken charge by in-charge of Malkhana as per Section 55 of the Act, 1985 and report of arrest & seizure was sent to superior officers as per Section 57 of the Act, 1985, therefore, argument advanced of behalf of the appellant that procedure was not followed as per the Act, 1985 is without substance.

11. The quantity of contraband article seized in the present case is more than small quantity. As per the notification, quantity of 1 kg. is small quantity and more than 20 kg. is commercial quantity. The quantity of contraband article seized in the present case is more than 5 kg. is neither small nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 and deterrent punishment is required under the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

12. Looking to the quantity of contraband article ganja, the trial court awarded jail sentence of 3 years and fine of Rs. 6000/- to the appellant which cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
13. The appellant is reported to be on bail, her bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after her arrest, she be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 15th April, 2020.

Sd/-

(Ram Prasanna Sharma)

Judge