

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 859 of 2001

1. Manuram S/o. Shri Bajuram Gond, Aged about 38 years (**Deleted**)
2. Renuram S/o. Dasruram Karanga, Aged about 35 years,
3. Pandariram S/o. Gondoram, Aged about 40 years,

All resident of village Timnar, Police Station and Tahsil Narayanpur,
District Bastar (C.G.)

---- Appellants

Versus

State of Chhattisgarh Through P.S. Raoghat, District Kanker (C.G.)

---- Respondent

For Appellants : Mr. R.K. Jain with Smt. Kiran Jain, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

05.09.2019

1. This appeal is preferred against the judgment of conviction and order of sentence dated 17.08.2001 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Bastar at Jagdalpur in Special Criminal Case No. 02/2001, wherein the trial Court convicted the accused/appellants under Section 20 (B) (1) of the Act, 1985 and sentenced them to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for nine months.

2. As per prosecution case, Dukalusingh Netam (PW-3) posted as Assistant Sub Inspector in Police Station Raoghat. On 22.12.2000 he along with the staff was on duty of vehicle checking at main road Raoghat. On the same day, at about 12.30 PM, the appellants were coming there having bags on carrier of bicycle. Dukalusingh Netam (PW-3) stopped them and asked about the bags which they kept on their bicycles. On being suspicion, he informed the appellants of their rights for search by any Gazetted Officer or Executive Magistrate or he can be searched by him. He issued notice Ex.P-1 to Ex.P-3 to the appellants and the appellants consented to be searched by him under Ex.P-1(2) and Ex.P- 3(C), thereafter, he prepared talashi panchanama Ex.P-5 to Ex.P-7. During search, Dukalusingh Netam (PW-3) called the independent witnesses and their presence, he found Ganja like in the bags and prepared seizure panchanama Ex.P-8 to Ex.P-10. He made taul panchanama and seized total 33.00 KG Ganja from all appellants. 11.00 KG Ganja from appellant No.1 under Ex.P-15, 10.500 KG Ganja from appellant No. 2 under Ex.P-16 and 10.900 KG Ganja from the appellant No.3 under Ex.P-17. Two sample of 50-50 grams were separated from the said articles and sealed in the presence of witnesses under Ex.P-19 to Ex.P-21 and rest of Ganja was sealed in different packet in presence of witnesses. The applicants were arrested under Ex.P-25 to Ex.P-27 vide crime No. 12/2000. FIR Ex.P-30 was registered against them in Police Station Raoghat. Seized articles sent for examination to Forensic Science Laboratory, Raipur for chemical examination under Ex.P-33 where after examination seized article is found to be Cannabis/Ganja under Ex.P-34. All legal

formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellants in the Court of Special Judge NDPS Act, 1985, wherein the Special Judge NDPS Act framed charges as mentioned above to which the appellants did not plead guilty. The Special Judge, NDPS Act, 1985 conducted the trial and after completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C., was recorded and after completion of trial, the Special Judge considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.

3. Learned counsel appearing for the accused/appellants submits that there omissions and contradiction in the deposition of the witnesses. He submits the investigation officer does not fulfill all the mandatory provisions of the NDPS Act. He submits that the trial Court by not marshaling the evidence in right perspective came to wrong conclusion. Lastly, he submits that the appellants are poor persons earning their bread by job of labour and they have already remained in jail from 26-12-2000 to 05-03-2002 i.e. one year, three months and 12 days and they will not commit any other likewise offence in future. In the circumstances, it would be just and proper to punish them for the period already undergone by them.
4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Dukalusingh Netam (PW-3) is a person who investigated the matter right from beginning. He deposed that on 22.12.2000 he was on duty of vehicle checking with the staff. At about 12.30 PM, the appellants were coming there having bags on the carrier of bicycle. Dukalusingh Netam (PW-3) stopped them and asked about the bags which they kept on their bicycles. On being suspicion, he informed the appellants of their rights for search by any Gazetted Officer or Executive Magistrate or he can be searched by him. He issued notice Ex.P-1 to Ex.P-3 to the appellants and the appellants consented to be searched by him under Ex.P-1(2) and Ex.P- 3(C). Dukalusingh Netam (PW-3) deposed that he called the independent witnesses, and in presence of the independent witnesses, he searched the appellants. During search he found about 33.00 KG from the appellants under Ex.P-19 to Ex.P-21. He deposed that 11.00 KG Ganja was seized from appellant No.1 under Ex.P-15, 10.500 KG Ganja was from appellant No. 2 under Ex.P-16 and 10.900 KG Ganja was seized from the appellant No.3 under Ex.P-17. Dayaluram (PW-2) was examined as independent witnesses in this case. This witness has stated that at the time of seizure of Ganja like substance from the appellants, he was present on the spot and all the proceedings have been recorded before him by the Police Official and he signed the documents under Ex.P-14, Ex.P-15 to Ex.P-17. Mansingh Parmar (PW-5) deposed that the seized articles was sent for examination to Forensic Science Laboratory, Raipur through head constable Lekhram Sahu and as per report of laboratory Ex.P-33, test of ganja was found positive.

6. From over all assessment of the evidence, I am of the view that factum of seizure of Ganja is established and there is no provision in the Act for licensing the said articles. Possession itself is made punishable and when the conscious possession of the appellants were proved before the trial Court, the finding arrived at by the trial Court is not perverse and it can not be said that the trial Court has considered irrelevant and extraneous material and it would not be proper to reverse the finding of the court below. Being so, their conviction recorded by judgment impugned is hereby maintained.
7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 19 years ago and the appellants have already remained in jail for about 1 year 3 months and 12 days and deposited the fine amount imposed on them, in my opinion, no useful purpose is going to be served in again sending them to jail. Accordingly, their jail sentence is reduced to the period already undergone by them.
8. With the above, the appeal stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE