

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 885 of 2001**

- Kishan Kumar, aged 19 years, S/o Prem Sarthi, R/o Village Bhanupratappur, District Kanker, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through District Magistrate Jagdalpur, District Bastar, C.G.

---- Respondent

For Appellant

Shri Prafull N. Bharat, Advocate along
with Shri Keshav Dewangan, Advocate.

For Respondent/State

Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board**19/09/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.07.2001 passed by the Special Judge, NDPS Act, Bastar Place Jagdalpur in Special Criminal Case No. 18/2001, convicting the accused/appellant under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act and sentencing him to undergo R.I. for 1½ years and fine of Rs.3,000/-, in default thereof to suffer additional R.I. for 4 months.
2. Facts of the case in brief are that on 30.03.2001, PW-2 Cheduram, ASI posted in Police Station, Narayanpur, received a secret information that appellant Kishan Kumar along with Nain Kumar are travelling in bus with Ganja, the said information was reduced to writing vide Ex.P-1 (panchnama). The police party along with witnesses went to the spot,

apprehended the accused, gave him notice vide Ex.P-2 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-13. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-4. On search of the accused Kishan Kumar, Ganja like substance was recovered and on being examined by smelling, burning and tasting, it was found to be Ganja vide. On weightment being done of the contraband it was found to be 3 kg 500 gms vide Ex.P-8. Two samples, each of 30 gms, were drawn from the said contraband and seizure memo vide Ex.P-11 was prepared, the samples were duly sealed and panchnama of specimen of seal prepared vide Ex.P-9. Spot map was prepared Ex.P-14. The accused was arrested vide Ex.P-12, after reaching police station, FIR Ex.P-15 was registered against the appellant under Section 20(b) of the NDPS Act. Intimation of the entire proceedings was forwarded to Higher Authorities/Special Judge. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which confirms the seized contraband to be Ganja. 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.

3. So as to hold the accused/appellant guilty, the prosecution examined three witnesses in all. Statement of the accused/appellant 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.
4. The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment convicted and sentence the appellant as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant submits:-

- that the independent seizure witness has not supported the prosecution case.
- that there is total non-compliance of all the mandatory provisions of the NDPS Act.
- that he is not pressing conviction of the appellant and is confining his argument only to the sentence part. He submits that the appellant is a first offender, the incident took place around 18 years back, at that time the appellant was 19 years of age, he has already remained in jail for more than 11 months, therefore, considering the facts and circumstances of the case, the jail sentence may be reduced to the period already undergone by him.

6. On the other hand, learned counsel for the State supports and impugned judgment and submits that all the mandatory provisions of NDPS Act have been duly complied with the prosecution.

7. Heard counsel for the respective parties and perused the material on record.

8. It is not disputed by counsel for both the parties that in presence of PW-1 Rajuram all the documents Ex.P-1 to Ex.P-12 were prepared and he signed all the documents but he has not supported the prosecution case and declared hostile. Mainly the prosecution case is based on the evidence of PW-2 Cheduram and PW-3 Chitram Thakur. PW-2 Cheduram Ram states that at the relevant time he was working as ASI in Police Station, Narayanpur. On 30.03.2001, upon receiving a secret information that the appellant Kishan Kumar along with Nain

Kumar are travelling in Kanker Roadways bus from Kondagaon to Rajnandgaon with Ganja, he prepared the secret information Panchnama and thereafter along with the staff proceeded to the indicated place. After reaching the said place, the accused/appellant was apprehended, he was given notice vide Ex.P-2 of his personal search by the Magistrate or the police and upon consent being given by the appellant vide Ex.P-13 his search was made and Ganja like substance was recovered from him which was kept in a Gunny Bag vide Ex.P-5. He further states that after preliminary examination, the contraband was found to be Ganja vide Ex.P-7. Thereafter, weightment of the same was done and it came to be 3 kg 500 gms, from which two samples of 30 gms each were drawn, sealed and panchnama was prepared vide Ex.P-9. Thereafter, the spot map Ex.P-14 was prepared, the accused/appellant was arrested and the appellant along with the seized contraband were brought to police station where FIR Ex.P-15 was registered. The seized articles were sent to Malkhana vide Ex.P-16. Information regarding registration of FIR was immediately forwarded to the Special Court, Jagdalpur vide Ex.P-17 and the seized Ganja was sent to Forensic Science Laboratory (FSL) through S.P. Jagdalpur vide Ex.P-18 and as per report Ex.P-19, the contraband was confirmed to be Ganja.

9. PW-3 Chitram Thakur, Head Constable, was working as Malkhana Muharrir at the relevant time. He has proved the deposit of the seized contraband in the Malkhana vide Ex.P-16. He has also proved the fact that the seized Ganja was sent for chemical examination to FSL, Raipur vide Ex.P-23 and Ex.24.

10. As per evidence of PW-2 Cheduram Sevla, on 30.03.2001 itself the

Station House Officer of Police Station, Narayanpur forwarded the information regarding receipt of secret information that two persons are illegally carrying contraband Ganja in a bus to the Additional Superintendent, Narayanpur (Ex.P-22). On 31.03.2011, Special Court was also informed by the police through the wireless message about the arrest of the appellant and the recording of first information report (Ex.P-20). Further, the documents of Ex.P-2 and Ex.P-3 have been duly proved by PW-2 Cheduram. The aforesaid evidence of PW-2 Cheduram and PW-3 Chitram Thakur were remained unchallenged in the cross-examination and as such there is no reason to disbelieve their statements. From the above, it stands proved that the police duly complied with the provisions of Section 50 of the NDPS Act. Though, PW-1 Rajuram has not supported the prosecution case but he has admitted his signatures on all the relevant documents Ex.P-1 to Ex.P-12. True it is that PW-1 Rajuram has not supported the prosecution case in respect of seizure of contraband from the appellant, however, PW-2 Cheduram, Investigating Officer has duly supported the prosecution case and there is nothing on record to show that the IO was having any ill-will or previous enmity with the appellant. Therefore, there is no reason to disbelieve the statement of PW-2 Cheduram Sevla.

11. Thus, considering the oral and documentary evidence available on record, this Court is of the opinion that the prosecution has duly complied with all the relevant provisions of the Act while conducting proceedings of search, seizure, arrest, sending of seized articles for chemical examination and informing about the entire proceedings to the Superior/Competent Authority. Being so, the trial Court was fully justified in convicting the appellant under Section 20(b)(i) of the NDPS

Act.

12. As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place around 18 years back, age of the appellant at the relevant time i.e. 19 years and at present i.e. 37 years, the fact that the appellant is a first offender, he has already remained in jail for about 11 months, this Court is of the opinion that ends of justice would be served, if the appellant is sentenced to the period already undergone by him, while keeping the fine amount with default stipulation intact.

13. In the result, the appeal is allowed in part. Conviction imposed on the appellant under Section 20(b)(i) is hereby maintained. However, he is sentenced to the period already undergone by him. The fine amount of Rs.3,000/- imposed by the trial Court with default stipulation shall remain intact.

Sd/-
Gautam Chourdiya
Judge