

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 15-02-2019****Delivered on 28-03-2019****CRA No. 857 of 2011**

- Dayalu Kashyap s/o. Nanda Kashyap, aged about 22 years, Caste Bhatra, r/o. Village Ichhapur, Patelpara, PS Bhanpuri, Dist. Bastar (CG).

---- Appellant**Versus**

- State of Chhattisgarh through Station House Officer, PS Nagar Naar, out Post Bakawand, Dist. Bastar (CG).

---- Respondent

For Appellant : Ms. Pushpa Dwivedi, Advocate.
 For respondent/State : Mr. Afroz Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26-8-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Bastar, at Jagdalpur, Dist. Bastar (CG) in Special NDPS Case No. 47 of 2010, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per version of prosecution, on 11-9-2010, Sub Inspector K.D. Singh (PW/5) of Out-post Bakawand received information from Mukhbir that one person having worn a cream colour half shirt and the lungi of brown and black colour keeping Ganja in a polythene pack is coming from Bhaisaboda to Pithapur. The said Information was recorded and two independent witnesses were called. Information was sent to higher authorities, thereafter the Police Officer rushed to the spot along with independent witnesses and police personnel. The said police officer informed the appellant about his right to be searched by Gazetted Officer or Magistrate but he opted to be searched by this Police Officer. After legal formalities he was searched and search in one cover kept by him contraband article Ganja was seized. It was weighed and found to be 21 kgs. The matter was reported and after completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant would submit as under.

- i) The case of the prosecution is not proved beyond shadow of doubt because independent witnesses have not supported the version of prosecution.
- ii) Seized property was not properly sealed and no signature of the appellant was

taken. In absence of link of submission of seized sample packet to FSL, charge levelled against the appellant is not established.

- iii) The mandatory provisions of the Act, 1985 have not been complied with, therefore, benefit of doubt ought to have been extended to the appellant.

Reliance has been placed on the decision of this Court **in the matter of Amarnath Soni s/o. Shambhunath Soni and others vs. State of Chhattisgarh, reported in 2018 E-Juris (Chh) (12) 6.**

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Sub Inspector of Police K.D. Singh (PW/5) deposed before the trial Court that he received information from Mukhbir on 11-9-2010 that one person having worn a cream colour half shirt and the lungi of brown and black colour keeping Ganja in a polythene bag had one Kawad on his shoulder in which he is having contraband

article Ganja. He recorded the said information in Rojnamcha Sanha. Two independent witnesses were called through notice and information recorded by him was sent to higher authorities and then he rushed to the spot with independent witnesses and police personnel. He gave notice in writing to the appellant that he is entitled to be searched by Gazetted Officer or by Magistrate, but he opted to be searched by this Police Officer. First all the police personnel and independent witnesses were searched and no objectionable articles were found in their possession. Thereafter, polythene bag of the appellant was searched in which contraband article was found. One weighing machine was called and it was checked and after weighing seized article was found to be 21 kgs. Four samples of 25 grams each were separated from seized article and articles and samples were sealed and seizure memo was prepared and thereafter seized articles were handed over to Incharge of Malkhana who kept the same in Malkhana. Proceeding of seizure and search was submitted to higher authorities. Version of this witness is supported by version of Head Constable Devnath Thakur who was Incharge of Malkhana. As per version of this witness, contraband article was handed over to him for keeping the same in safe custody in Malkhana. As per Ex.P/16 which is Malkhana register, two bundles of Ganja each containing 10 kgs and 450 grams were kept in Malkhana which comes to 20 kgs and

900 grams and four samples of 25 grams each were kept in Malkhana, in all total 21 kgs.

7. From the statement of Constable Kailash Thakur (PW/6) he received samples for depositing the same in FSL and deposited the same in FSL on 14-9-2010. As per version of this witness, he received two sealed packets on 13-9-2010. Report of Ganja was sent by FSL as per Ex.P./32 in which test of Ganja was found positive.

8. True it is that PW/2 Dhaneshwar Baghel and PW/3 Dhaneshwar Saket who are said to be independent witnesses deposed that proceeding was done in police station, but from their examination-in-chief, it is clear that articles were seized from the appellant which is supported by version of Devnath Thakur (PW/4), therefore, argument on behalf the appellant that independent witnesses have not supported the version of prosecution, is without substance. From the statement of Sub Inspector K.D. Singh (PW/5), it is established that information was sent to higher authorities which was corroborated by Constable Tekram Deshmukh (PW/7) and Constable RajKumar (PW/8).

9. From the evidence it is established that information was sent to higher authorities. Though it is not a case of personal search, notice was given to the appellant as per provisions of Section 50 of

the Act, 1985. Seized article was sent to Incharge of Malkhana for safe custody as per provisions of Section 55 of the Act, 1985. Information regarding arrest and seizure was sent to Sub Divisional Officer (Police) as per Section 57 of the Act, 1985. Therefore, argument advanced on behalf of the appellant that the mandatory provisions of the Act, 1985 have not been complied with, is not sustainable. Again, there is no material contradiction regarding seizure in the statement of the prosecution witnesses. Seized articles were handed over to Constable Kailash Thakur (PW/6) on 13-9-2010 and he submitted the same in FSL, Raipur. Packets were handed over at Out Post Bakawand, District Bastar, therefore, submission of the same on the next day at the distance place of Raipur cannot be termed as delayed submission. Again, there is no material contradiction regarding seizure in the statement of the prosecution witnesses. It is further clear from the evidence that the seized article was sent to FSL for examination and report thereof was received in which test of Ganja was found positive. Argument advanced on behalf of the appellant on this count is not sustainable.

10. In the present case, Police Officer namely Sub Inspector K.D. Singh (PW/5) though recoded FIR, but he did not investigate the matter. He did not do anything after search and seizure, therefore, it cannot be said that the person who lodged FIR has

investigated the matter. Again FIR is lodged on the basis of information given by Mukhbir who is a private person. Argument advanced on behalf of the appellant on this count is not sustainable. Case law cited by learned counsel for the appellant does not help to him as the same is distinguishable from the facts of the present case.

11. All the witnesses have deposed in affirmative regarding seizure of contraband article Ganja from the possession of the appellant. There is no material contradiction which warrants interference by this court to the judgment of conviction. Illegal possession of quantity of Ganja is 21 kgs which is commercial quantity, therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed. Sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable.

12. Accordingly, the appeal is liable to be and is hereby dismissed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-
(RAM PRASANNA SHARMA)
Judge

Raju