

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 740 of 2001

Judgement reserved on 01.08.2019

Judgement delivered on 11.12.2019

Surendra Rai S/o. Shri Sakaldeep Rao, Aged about 40 years,
Occupation Service, R/o. Nandini Mines Nandni, District Durg (C.G.)

---- **Appellant**

Versus

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

---- **Respondent**

For Appellant : Mr. Rajesh Jain, Advocate.

For Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24.07.2001 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. 8/2001, wherein the trial Court convicted the accused/appellant under Section 20 (B) (1) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 2500/-, in default of payment of fine, to further undergo rigorous imprisonment for four months.

2. Case of the prosecution in brief is that on 01.01.2001 Sub Inspector Krishna Pandey (PW-1) was carrying out routine checking of vehicles. At the same time, the appellant was coming towards police station on scooter bearing registration No. M.P.23 Y.A. 4405 crossed them with high speed and escaped from there, immediately Sub Inspector Krishna Pandey (PW-1) send a message on wireless to near Police chowki at Tadoki for search and stop the vehicle. The police party of Tadoki Chowki stopped the appellant and informed him, then Krishna Pandey (PW-1) went there along with staff and returned to police Station Raoghat with the appellant. Krishna Pandey (PW-1) suspected that the appellant was carrying contraband and he wanted to search him. He informed the appellant of his right for search by any Gazetted Officer or Executive Magistrate or he can be searched by him. He issued notice Ex.P-1 to the appellant and he consented to be searched by him vide (Ex.P-11). He searched the appellant and Ganja like substance was found in the right side of dickey of scooter. In presence of independent witnesses he prepared talashi Panchnama as per Ex.P-3. After searching he was found to be in possession of Ganja in two packets of polythene. The seized Ganja was measured and found to be 4.900 Kgs. Two sample of 50-50 grams were separated from the said articles and sealed in the presence of witnesses and rest of Ganja was sealed in different packet. Seized articles were handed over to In-charge of Malkhanan of the said Police Station who was Constable Laxmi Narayan Shukla. The applicant was arrested. FIR

Ex.P-14 was registered against him. Seized articles were sent for examination to Forensic Science Laboratory, Raipur for chemical examination under Ex.P-18 where after examination seized article is found to be Ganja under Ex.P-19. 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 appellant 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 appellant 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/appellant 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 panch witnesses have not supported the case of the prosecution and they turned hostile and the statement of Investigation Officer does not corroborate from the statement of independent witnesses, therefore, the appellant may be acquitted of the charges.

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. Krishna Pandey(PW-4)- the Investigating Officer has stated in his evidence that on 01.01.2001 he was on duty of vehicle checking at Police Station Raoghat, at that time on scooter bearing registration no. M.P.23 YA. 4405, the said scooter was crossed him with hight speed, then he tried to stop the scooter but the appellant did not stop the scooter on signaling, immediately he sent a message on wireless to Todoke Police Chowki to search and stop the vehicle. Officer of Todoki Police Chowki stopped the appellant with the vehicle thereafter he went to Todoki Police Chowki and after getting the appellant he returned to police Station Raoghat. According to his version on suspicion, he searched the dickey of scooter in presence of the witnesses which was driven by the appellant. He gave a notice Ex.P-1 under Section50 of the Act to the appellant and after obtaining the consent Ex.P-11 from the appellant he was searched. Thereafter, talashi Panchnama Ex.P-2 was made and on being searched total 4.900 Kgs. of Ganja kept in 2 packets on the right side of dickey of the scooter and prepare seizure Panchanama Ex.P-4. He also prepared identification panchnama (Ex.P-5) of the recovered contraband article. After being weighed, weight panchnama Ex.P-7 was prepared. 2-2 samples each containing 50-50 Grams were

prepared from each of the 2 packets and were sealed under Ex.P-8. After search of the appellant he seized cash Rs. 167/- under Ex.P-10 from the appellant. The sample packets and the remaining quantity of Ganja were deposited in the Malkhana Ex.P-14 and arrested the appellant under Ex.P-15.

6. Krishna Pandey(PW-4)- Investigating Officer has further deposed that he sent the sealed sample packets to the Forensic Science Laboratory for examination vide memo (Ex.P-18). As stated by this witness, he received report (Ex.P-19) from the FSL. The FSL Report (Ex.P-19) is positive. Version of this witness is supported by version of Purnabh (PW-2) who is the independent witnesses. Version of Laxmi Narayan Shukla Constable- who was in-charge of Malkhana and who received the seized article and kept the same in Malkhana. From the statement of Krishna Pandey(PW-4), sample was sent to Forensic Science Laboratory for chemical examination and test report is received with article through Constable No. 298. True, it is that PW-1 and PW-2 have not supported the version of Krishna Pandey(PW-4) but the same is not sufficient to discard the version of Krishna Pandey(PW-4) on the ground that he is a Police Officer.

7. From the entire record, it is clear that a notice was served to the appellant as per Section 50 of the Act, 1985 and property was kept in safe custody of Malkhana as per Section 55 of the Act, 1985 and report regarding seizure and arrest was sent to higher authorities 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 not acceptable.

8. From the statement of Krishna Pandey(PW-4)- Investigating Office it is established that 2 packets of Ganja was kept by the appellant in his possession which was seized. It is not search of person for which provision of Section 50 is attracted. In the present case, all proceedings have been recorded on the date of incident and all written papers are filed with the charge sheet.

9. On 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 appellant was 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.

10. 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 that the appellant has already remained in jail about 3 months and 10 days, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his jail sentence is reduced to the period already undergone by him and the fine amount is being enhanced from Rs. 2500 to Rs.5,000 of the appellant which the appellant shall deposit within a period of 2 months from today. In the event there is default of payment of

fine, the appellant shall undergo rigorous imprisonment for a further period of 4 months. With the above, the appeal stands allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh