

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1042 of 2001

Judgment reserved on 04.09.2019

Judgment delivered on 18.09.2019

Chandrakishore Paswan S/o. Bramhdeo Paswan, Aged 28 years,
Occupation Labour, R/o. Bisunganj, Gaya, Bihar, Present address
Pandav Para, District Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant : Mr. Praveen Dhurandhar, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

1. This appeal is preferred against the judgment of conviction and order of sentence dated 20.08.2001 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS Act, 1985'), Raipur in Special Criminal Case No. 72/2000, wherein the trial Court convicted the accused/appellant under Section 20 (B) (1) read with section 8 of the Act, 1985 and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 3,000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. As per prosecution case, Rajesh Tiwari (PW-8) posted as Assistant Sub Inspector in Police Station Civil Lines. On 11.10.2000 he received an information from the informant that a man alighted from Jagdalpur bus and inquired about another bus was having

illegal contraband in his air bag. Police recorded this information in Dehatinalshi Ex.P-23 and thereafter they prepared Rojnamchasanha No. 743 Ex.P-24. After receiving information, the Police swung into action and rushed to the spot. 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-3 to the appellant and the appellant consented to be searched by him vide (Ex.P-4) thereafter he prepared talashi panchanama Ex.P-5, Ex.P-6 and weight panchanama Ex.P-7. During search, Rajesh Tiwari (PW-8) found Ganja like suitcase in his suitcase and air bag. The seized Ganja was measured and found to be 22.00 KG. Two sample of 25-25 grams were separated from the said articles and sealed in the presence of witnesses under Ex.P-8 and rest of Ganja was sealed in different packet. In presence of witnesses he prepared Panchnama as per Ex.P-10 and Dehatinalishi Ex.P-23. The applicant was arrested under Ex.P-12 and prepared arrest panchanama Ex.P-12. FIR Ex.P-25 was registered in Police Station Civil Lines. Seized articles were handed over to In-charge of Malkhanan of the said Police Station who was Urmila Prashad Pandey (PW-6) and the same was sent for examination to Forensic Science Laboratory, Raipur for chemical examination where after examination seized article is found to be Cannabis/Ganja. All legal formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellant 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/appellant submits that there omissions and contradiction in the deposition of the witnesses. He submits that the prosecution has failed to establish that seized article belong to the appellant which was kept in a suitcase and airbag. He further submits that the trial Court by not marshaling the evidence in right perspective came to wrong conclusion.

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. I have heard counsel for the parties and perused the material on record.

6. Rajesh Tiwari (PW-8) is a person who investigated the matter right from beginning. As per version of this witness he received information that appellant is carrying illegal contraband Ganja in his suitcase and air bag. Rajesh Tiwari (PW-8) reached to the spot along with the staff. He further deposed that he has informed the appellant of his right of search by any Gazetted Officer or Executive Magistrate or he can be searched by him but he opted to be searched by the said police officer. After searching he was found in

possession of Ganja like substance which he kept in a suitcase and air bag. The substance was seized in the presence of the witnesses and weighed on the spot and handed over the In-charge of Malkhanan of the said Police Station who was Urmila Prashad Pandey(PW-6). Rijvan Ahmad (PW-5) was examined as independent witnesses in this case. This witness has stated that at the time of seizure of Ganja like substance from the applicant, 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-1 to Ex.P-12. Urmila Prashad Pandey (PW-6) has supported the version of Sub Inspector Rajesh Tiwari (PW-8). As per version of this witness, he kept the seized articles in Malkhana and for that he made entry in register at Sr. 110 under Ex.P-20. D.K. Mushrif (PW-7) deposed that the seized articles was sent for examination to Forensic Science Laboratory, Raipur on 16.10.2000 through constable Sharda Upadhyay (PW-3) and as per report of laboratory test of ganja was found positive.

7. 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 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. Being so, his conviction recorded by judgment impugned is hereby maintained.

8. 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 appellant has already remained in jail for about 1 year 4 months and 23 days and deposited fine amount imposed on him, 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.

9. With the above, the revision stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh