

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25-1-2019****Delivered on -03-2019****CRA No. 1002 of 2012**

- Rajesh Gwatiya, s/o/. Sonilal Gwatiya, aged about 28 years, r/o. Manjholi, PS (Panagarh) Dist. Jabalpur (MP).

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Basna, Dist. Mahasamund (CG).

---- Respondent

For Appellant	:	Mr. Bharat Rajput, Advocate appears as Amicus Curiae
For respondent/State	:	Mr. V.B. Singh, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 16-9-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Mahasamund in Special Criminal Case No. 07 of 2011, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.50,000/- with default stipulations.

2. As per prosecution case, on 9-3-2011 at 1.00 pm Police Officer of Police Station Basna received confidential information from Mukhbir that one person is standing at Bhavarpur turning near

Bihari Dhaba, Police Station Basna holding two bags containing Ganja in it is waiting for bus. The said Police Officer after recording information and after completing formalities rushed to the spot and after obtaining consent, searched the bags in which ganja was found which was weighed and found to be 10 kgs. The matter was reported. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) Independent witness PW/1 Nirmalsingh Kotwar has not supported the version of prosecution, therefore, case of the prosecution is under doubt.
- ii Police Authorities have flouted Sections 42, 50 and 57 of the Act, 1985, therefore, finding of the trial court is not sustainable.
- iii) Owner of the bag was not prosecuted and the appellant was made accused who was waiting for bus in public place where many people were standing.
- iv) There is contradiction in the statement of the Investigating Officer/Sub Inspector Avinash Singh (PW/2) which is overlooked by the prosecution.

- v) Prosecution has not come up before the court with the whole and unvarnished truth or merely presented a perfunctory and tailored case, therefore, finding of the trial Court is liable to be set aside.

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. PW/2 Sub Inspector Avinash Singh who was posted at Police Station Basna on the date of incident i.e., 9-3-2011 deposed that he received information from one informer (mukhbir) that one person is standing near Bus stand at Bhavarpur turning near Bihari Dhaba, Police Station Basna holding two bags containing Ganja and is waiting for bus. As per version of this witness recorded this information as per Ex.P/1 and copy of the said information was sent to Sub Divisional Officer (Police) Saraipali. Therefore, he rushed to the spot with panch witnesses and police personnel which is recorded in Rojnamcha Sanha as per Ex.P/14. He found one person standing and served notice to the appellant for his search as per Section 50 of the Act, 1985 that he is entitled to be

searched by any Gazetted Officer or Magistrate, but he opted to be searched by this witness. After searching panchnama was prepared and cannabis from both bags were mixed and thereafter two samples of 50 grams each were separated from the said article. As per version of this witness, the seized article was weighed which was found to be 10 kgs. All articles were sealed and samples were also sealed and the seized articles were handed over to Incharge of Malkhana. Samples were withdrawn from Malkhana and sent to FSL for examination through constable No. 109 who submitted the same in FSL and submitted the acknowledgement before the Police Station and report of FSL was found as per Ex.P/21 in which test of Ganja was found positive. He further deposed that information regarding seizure/search was sent to higher authorities which was recorded in Rojnamcha Sanha as per Ex.P/20. Version of this witness is supported by version of PW/3 Gokul Pradhan who received articles in sealed condition and kept the same in safe custody of Malkhana of Police Station. PW/4 Nandkumar Das, Asst. Sub Inspector deposed that information was received in the office of Sub Divisional Officer (Police) Saraipali. PW/5 Surendra Pradhan, who is seller of vegetable, deposed that he weighed the seized article which was kept in ten bags and after weigh he found total quantity to be 10 kgs. Version of Avinash Singh (PW/2) Sub Inspector is

supported by version of PW/7 Souhan Kotak. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Information which was received from Mukhbir was sent on same day to the Sub Divisional Officer (Police), therefore, provisions of Section 42(2) of the Act, 1985 is complied with. It is a case of search of bag and it is not a case of personal search, therefore, Section 50 of the Act, 1985 is not applied though notice was served to the appellant as per provision of Section 50 of the Act, 1985. Again property was kept in safe custody of Malkhana as per provision of Section 55 of the Act, 1985 and information regarding search and seizure was sent to higher authorities as per Section 57 of the Act, 1985, Therefore, argument advanced on behalf of the appellant that the provisions of the Act, 1985 have not been complied with, is without substance. There is no material contradiction or omission in the statement of the witness regarding seizure for keeping the seized articles in safe custody and sending the same to FSL. Minor contradictions have no adverse affect , therefore, argument on this count is also not sustainable.

7. PW/1 Nirmal Singh, Kotwar deposed that he accompanied the Police Officer upto the spot where appellant was standing where contraband articles were seized from him. His version is

also supportive piece of evidence. On overall assessment, argument advanced on behalf of the appellant is not acceptable.

8. Illegal possession of quantity of Ganja is 10 kgs which is neither small quantity nor commercial quantity, therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(b) 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. The trial court awarded sentence of 5 years which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not interfered with.

9. 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 is arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju