

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 1-2-2019****Delivered on 8-03-2019****CRA No. 433 of 2011**

- Jitendra Chaudhari, s/o. Lakhan Chaudhari, aged about 19 years, r/o. Village Kusner, PS Panagar, District Jabalpur (MP).

---- Appellant**Versus**

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

---- Respondent

For Appellant : Mr. Raghavendra Pradhan, Advocate.

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 30-11-2010 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Mahasamund, District Mahasamund (CG) in Special Criminal Case No. 3 of 2010, 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.40000/- with default stipulations.

2. As per version of prosecution, on 6-5-2010 at about 3.40 pm the appellant was found in illegal possession of 5 kgs and 100 grams of Ganja at Bus Stand Saraipali. The matter was reported and

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) The trial court failed to consider that there are hardly any reliable evidence to warrant the conviction of the appellant beyond all reasonable doubt.
- ii) The trial Court failed to see that the mandatory provisions of Sections of the Act, 1985 have not been complied with.
- iii) There are major contraindications between the court statement and the case diary statement of the prosecution witnesses.
- iv) The star witnesses of the prosecution have not supported the case of the prosecution story and have been declared hostile. Thus, legal aspect of the matter is not appreciated by the trial Court that is why the finding of the trial Court is liable to be reversed.

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/4 is Sub Inspector of Police Station, Saraipali/Pithora namely Avinash Singh (PW/4). As per his version, he received information from Mukhbir on 6-5-2010 at Police Station Saraiali that one person was standing at Bus-stand, Saraiplai for transporting Ganja. He called two independent witnesses namely Rajendra Yadav and Dabbu Sen through notice and information recorded by him was sent to Sub Divisional Officer (Police) Saraipali and officer received information for which acknowledgement Ex.P/1 was given to constable No.151 Alok Sharma. As per version of this witness, he rushed to the spot with independent witnesses and police personnel and informed the appellant that he has right to be searched by Gazetted Officer or by Magistrate as per Ex.P/11. 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, bag of the appellant was searched in which contraband article was found. One electronic weighing machine was called and it was checked and after weighing seized article was found to be 5 kgs and 100 grams. Two samples of 50 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. He further deposed that information regarding seizure was sent to Sub Divisional Officer (Police) Saraipali. As per version of this witness, seized articles were sent to FSL, Raipur through Constable namely Nirmal Dewangn who submitted the same in FSL and acknowledgement receipt thereof was received as per Ex.P/27 and report of the laboratory was received as per Ex.P/28 in which test of Ganja was found positive.

7. Constable PW/1 Agni Pradhan deposed that he received information as per Section 42(2) of the Act, 1985 in the office of Sub Divisional Officer (Police) Saraipali. He further deposed that proceeding of seizure was also received by him in the same office which was submitted to Sub Divisional Officer (Police). Constable Alok Sharma (PW/2) deposed that he submitted the information to Sub Divisional Officer (Police) as per Section 42(2) of the Act, 1985. Head Constable Neelambar (PW/3) deposed that he was Incharge of Malkhana and he received Ganja to the tune of 5 kgs and 100 grams with two samples ie.. total 5 kgs 100 grams and samples were handed over to Constable Nirmal Dewamgm for submitting the same in FSL on 10-5-2010. He further deposed that all proceedings were recorded in Rojnamcha Sahna s per Ex. P/6, P/7 and P/8.

8. PW/6 Shyam Kumar Yadav deposed that he weighed the seized article and found to be 5 kgs and 100 grms. Though PW/5 Rajendra Yadav and PW/7 Kesari Nandan did not support the factum of seizure, but the fact remains that if they were not present at the time of seizure they are not real witnesses of the incident and if they suppressed the fact even after their presence on the spot, their version is not reliable. Version of the Police Officer cannot be discarded merely because he is a Police Officer.

9. The trial Court has elaborately discussed the entire evidence and recorded finding that quantity of Ganja is neither commercial nor small quantity.

10. 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 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. 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.

11. Illegal possession of quantity of Ganja is 5 kgs and 100 grams 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. Sentence awarded by the trial Court is not 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