

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 910 of 2010****Reserved on : 15.02.2019****Delivered on : 29.03.2019**

Lakhan Jagat, S/o Lachhi Jagat, aged about 62 years, occupation Service in Rolling Mill, R/o Roopnagar, Orriyapara, Kumhari, P.S.- Kumhari, District-Durg (C.G.), Permanent resident of Barhgaamrha, Bamurah, District-Balangir (Orrisa)

---- Appellant**Versus**

The State of Chhattisgarh, through the Station House Officer, Police Station-Kumhari, District- Durg (C.G.)

---- Respondent

 For Appellant : Mrs. Indira Tripathi, Advocate.
 For State/respondent : Mrs. Shubha Shrivastava, P.L.

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

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 28.10.2010 passed by Special Judge (NDPS Act), Durg (C.G.) in NDPS Special Case No. 06/2007, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 5 years and fine of Rs. 7000/- with further default stipulations.
2. As per case of the prosecution, on 26.02.2007 at about 5:00 p.m., In-charge of Police Station- Kumahari namely Virendra Chaturvedi (PW-

7) received an information from the informer that the present appellant has illegally kept contraband article ganja in his house for sale. This information was reduced in writing in Rojnamcha Sanha and the witnesses namely Banshi Nayak and Pratap Singh were summoned, thereafter, the information was recorded in register and the same was sent to the higher authorities. After completing all the formalities, the police officer along with other police personnel and independent witnesses reached to the spot and informed the appellant that he can be searched by any Gazetted Officer or Magistrate then he gave consent to be searched by the police officer. Thereafter, on search of his house, contraband article ganja was found in a plastic bag and tin drum. The total quantity of ganja was weighed and it was found to be 17 kg. & 700 grams. Two samples each of 50-50 grams were separated from the articles and marked as A-1 & A-2 and sealed. All the information regarding seizure and search were sent to the higher authorities and seized articles were kept in Malkhana of the said police station. The samples were sent for chemical examination to Forensic Science Laboratory where test of ganja was found positive. The appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

- (i) Independent witnesses have not supported version of the prosecution and version of investigating officer is inconsistency, therefore, seizure from the appellant is not established.
- (ii) It is doubtful whether the samples taken from the seized articles

were sent to Forensic Science Laboratory, therefore, finding of the trial court is not sustainable.

(iii) The seized articles have not been produced before the trial court and it is not identified by the witnesses.

(iv) The trial court has overlooked material contradiction and omission in the statement of prosecution witnesses.

(vi) The investigating officer has flouted mandatory provision of Sections 42 & 50 of the Act, 1985, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. First question for consideration before this Court is whether the articles were seized from possession of the appellant. Virendra Chaturvedi (PW-7) deposed before the trial court that he received information from Mukhabir that the appellant is in illegal possession of contraband article ganja in his house. He recorded information in Rojnamcha Sanha and sent one Constable- Mahfuj Khan for calling two independent witnesses who brought Banshi Nayak & Pratap Singh in the police station. Mukhabir information was prepared by this witness as per Ex. P/4 and it was sent to City Superintendent of Police, Crime, Bhilai through constable- Dhanendra Pandey (No. 544) Carbon copy of the said information is Ex. P/17.

6. As per version of this witness, he reached to the spot along with police personnel and independent witnesses and called the appellant and informed him about his right to be searched by Gazetted Officer or Magistrate as per notice Ex. P/18, but he opted to be searched by the police officer. As per version of this witness, all the police personnel including himself and witnesses were searched the appellant, but no objectionable article was found in his possession, thereafter, house of the appellant was searched wherein, contraband article ganja was found in a tin drum and plastic bag which was seized as per Ex. P/7. Thereafter, seized article were weighed which was found to be 6 kg. 200 grams & 11 Kg. & 500 grams. in the tin drum and plastic bag respectively totaling to 17 kg. 700 grams.
7. Two samples were separated from each article and packet was prepared as per Ex. P/10. The samples were marked as A-1 & A-2 which was sealed and specimen seal was also prepared and entire article was sealed. After returning the police station, he recorded the proceeding in Rojnamcha Sanha and recorded FIR as per Ex. P/22. As per version of this witness, he handed over the seized articles to the In-charge of Malkhana and information was given to Superintendent of Police. As per memo of Superintendent of Police (Ex. P/23), samples of seized articles were sent to Forensic Science Laboratory, Raipur through Constable- Kaliram who brought acknowledgement as per Ex. P/24. Report of Forensic Science Laboratory is received as per Ex. P/25 in which test of ganja was found positive.

8. Version of this witness is supported by version of Head Constable-Punaauram Sahu (PW-8) who was In-charge of Malkhana and as per version of this witness, seized articles with samples were deposited in Malkhana and entry to that effect is made in Malkhana register as per Ex. P/27.
9. Looking to the entire evidence, it is established that the articles were seized from house of the appellant. Though, Banshi Nayak (PW-2), Mahesh Kumar (PW-3) & Pratap Singh (PW-4), have not supported version of this police officer but if they were not present to see the real incident, they are not the real witness and if they are suppressing their presence during search and seizure even after their presence, their version is not reliable, therefore, their evidence is not sufficient to discard the evidence of the police officer.
10. From evidence of the police officer, it is established that the articles were seized from house of the appellant and as per version of J.B.S. Chauhan, Chief Municipal Officer (PW-6), the house in question is owned by the appellant who pays Rs. 402/- as property tax per year regularly.
11. Looking to the entire evidence, it is established that the appellant was in possession of the contraband article ganja. The appellant was under obligation to explain regarding seized article, but his version is plain denial which is meritless. Statement of police officer is unshaken during cross-examination and there is nothing on record to say that the appellant has been roped in false charge. There is nothing on record to say that the police officer has any grudge against the

appellant to implicate him in false case. Their version is firm and there is nothing on record to disbelieve the same. From all the evidence it is established that the appellant was in possession of contraband article ganja to the tune of 17 kg. 700 grams.

12. Second question for consideration before this Court is whether any mandatory provision is flouted by the police officer in the present case. The information received from Mukhabir was recorded in Rojnamcha Sanha and the same was sent to City Superintendent of Police, Crime, Bhilai as per provision of Section 42 (2) of the Act, 1985. It is search of house in which Section 50 of the Act, 1985 which is made for personal search, is not applicable, but in the present case, notice under Section 50 of the Act, 1985 was given to the appellant before search, therefore, it cannot be said that the Section 50 of the Act, 1985 was not complied with. The seized property was kept in safe custody of Malkhana as per provision of Section 55 of the Act, 1985 and again, information regarding seizure and search was sent to Superintendent of Police as per Section 57 of the Act, 1985, therefore, it cannot be said that any mandatory provision has been flouted by the police authorities. Argument advanced on behalf of the appellant on this count is not sustainable.
13. Rameshwar Pandey, Sub-Inspector (PW-5) has investigated the matter after registration of FIR and it is not a case where the authority who recorded First Information Report has proceeded with the investigation. The seized articles were produced before the trial court on 25th September, 2009 which was marked by the trial court,

therefore, it cannot be said that the property was not marked. Statement of learned counsel for the appellant on this count is also not liable to be sustained. Illegal possession of contraband article ganja to the tune of 17 kg. 700 grams. is neither small nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

14. Looking to the quantity of contraband article ganja, the trial court awarded jail sentence of 5 years to the appellant, his sentence cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. The appellant is reported to be in jail therefore, no order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge