

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 6-2-2019****Delivered on 08-03-2019****CRA No. 63 of 2012**

- Tulsi Shah s/o. Tilak Shah, aged about 25 years, r/o. village Dongri, Police Station Kotpar, Dist. Koraput (Orissa).

---- Appellant**Versus**

- State of Chhattisgarh through Police Station Sisshawa, Dist. Dhamtari

---- Respondent**&****CRA No. 137 of 2012**

- Lalit Kuamr Dewangan @ Lallu aged about 26 years, s/o. Kartik Dewangan, occupation driver, r/o. village Peeplakachar, PS and Tah. Khairgarh, Dist. Rajnandgaon (CG). At present resident of Shankarpur Ward No.7, Rajnandgaon, Dist. Rajnandgaon (CG).

---- Appellant**Versus**

State of Chhattisgarh through Police Station Sihawa, Dist. Dhamtari

 For Appellant in : Mr. Yogeshwar Sharma, Advocate.
 CRA No.63 of 2012

For Appellant in : Mr. R.V. Rajwada, Advocate
 CRA No. 137 of 2002

For respondent/State : Mr. Afroz Khan, Panel Lawyer

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

1. As both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. Both the appeals are preferred against the judgment of conviction and order of sentence dated 14-11-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Dhamtari (CG) in Special Criminal Case No. 2 of 2011, wherein the said Court has convicted the appellants for commission of offence under Section 20 (b)(ii) c) of the Act, 1985 and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- each with default stipulations.

2. As per version of prosecution, on 15-11-2010 at about 1.50 pm the Incharge of Police Station Sihava, namely H.L. Jain, Sub Inspector received information from Mukhbieer that in one Maruti Car bearing registration No. MP 20-CA/5031 two smugglers are smuggling Ganja kept in 30 plastic bags. After receiving the said information he called two independent witnesses from nearby village and prepared panchnama and same was sent to Sub Divisional Officer (Police) Dhamtrari and thereafter the he rushed to the spot along with two independent witnesses and police personnel. After searching the Maruti Van 210 kgs of Ganja kept in

30 bags in the said vehicle was seized. The matter was reported and appellants were charge-sheeted. After completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.

3. The appeal is preferred on the following grounds.

- i) Mandatory provisions of the Act, 1985 have not been complied with by the authorities, therefore, finding of the trial Court is not liable to be sustained.
- ii) Independent witnesses have not supported the version of prosecution, therefore, case of the prosecution is under cloud.
- iii) It has not been mentioned in Rojnamcha Sanha as to when Police party returned after seizure of articles in question.
- iv) Samples were not exhibited and the provisions in this regard have not also been complied with.
- v) Police sent contraband article for test to FSL, Raipur on 19-11-2010, but it was received on 23-11-2010. It is nowhere mentioned that in between this where they have kept the contraband, which creates serious doubt.

- vi) Ex.P/31 which is a copy of Malkhana Register, certain entries have not been made, therefore, the whole investigation is suspicious and 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. Sub Inspector H.L. Jain (PW/6) deposed before the trial Court that he received information from Mukhbir at Barbanda that one Maruti van bearing registration No. MP 20-CA 5031 is transporting contraband article Ganja in which two persons are sitting as smugglers. As per version of this witness, they were on patrolling and advanced for investigation in criminal case registered at Police Station bearing No. 35 of 2010 under Sections 326, 456 and 294 of IPC and in the meanwhile they received said information. The said information was sent to Sub Divisional Officer (Police) Nagri. When the said vehicle reached near them,

they enquired from two persons in the vehicle and thereafter notice under Section 50 of the Act, 1985 was served to them that they are entitled to be searched by Gazetted Officer or by Magistrate, but they 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, vehicle of the appellants in which 30 plastic bags were found in a jute bag. Constable Hemant Dhruv was sent to bring some person to weigh the articles and he came with Suresh Kumar and electronic balance and after weighing, total quantity of contraband article was found to be 210 kgs. The entire quantity was mixed and two samples from each plastic bag in all 60 samples were taken which were sealed and specimen seal was also prepared. After completion of seizure he went to Police Station and registered FIR. The seized property was handed over to Incharge of Malkhana who gave him acknowledgement as per Ex.P/27. All samples were sent to FSL through Constable Virendra Sonkar who deposited the same in laboratory and brought acknowledgement and report of laboratory was received as per Ex,P/30 in which test of Ganja was found positive. Version of this witness is supported by version of Nathuram Suryakar (PW/7), who was Incharge of Malkhana and who received articles seized in the present case and entry to this effect was made in Malkhana register as per Ex.P/31 and samples

were sent to laboratory through Constable Virendra Sonkar. As per version of Sub Inspector H.L. Jain (PW/6), Constable Pradeep Kumar Soni (PW/5) sent information regarding seizure and search in the present case as per Section 57 of the Act, 1985 to Sub Divisional Officer (Police) Nagri. As per version of Head Constable Hemant Borkar (PW/4), he was posted as Reader in the office of Sub Divisional Officer (Police) Nagri and received information of this case from constable Ramkrishna Sahu as per Ex.P/17. Though Suresh Sahu (PW/3) has not supported the factum of seizure, but the fact remains that if he was not present at the time of seizure he is not real witnesses of the incident and if he suppressed the fact even after his presence on the spot, his version is not reliable. Therefore, the statement made by other witnesses is not rebutted.

7. From the evidence it is established that information was sent to higher authorities as per Section 42(2) of the Act, 1985. Though it is not a case of personal search, notice was given to the appellants as per provisions of Section 50 of the Act, 1985. Seized article was sent to Incharge of Malkhana for sale custody 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. The Police Officer namely H.L. Jain(PW/6) who recorded the FIR did not investigate the matter after seizure, therefore, it is not a case where investigating officer and informant of FIR is the same person. Even otherwise, information was recorded on the basis of information given by the private informer. From the order sheet dated 21-2-2011 of the trial Court, it is clear that the property was submitted before the trial Court, therefore, argument advanced on behalf of the appellant on this count is not sustainable.

8. There is no material contradiction in the statement of the prosecution witnesses. Their version cannot be disbelieved merely because they are police officers. Presence in the vehicle of the appellants in which contraband article Ganja was found is clearly established by the evidence which shows that they were in conscious possession of contraband article Ganja.

9. All the witnesses have deposed in affirmative regarding seizure of contraband article Ganja from the possession of the appellants. There is no material contradiction which warrants

interference by this court to the judgment of conviction. Illegal possession of quantity of Ganja is 210 kgs commercial quantity as it is more than 20 kgs. therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(c) 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 appellants is hereby affirmed. The trial Court awarded minimum sentence and less than minimum cannot be awarded.

10.. Accordingly, the both the appeals are liable to be and are hereby dismissed. As the appellants are reported to be in jail, therefore, no further order for their arrest etc., is required.

Sd/-

(RAM PRASANNA SHARMA)

Judge

Raju