

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 72 of 2013**

- Tarun Kumar S/o Punit Ram Lasel, Aged About 20 Years, R/o Pass Nagar, Near Masjid, P.S. Devendra Nagar, Raipur, District Raipur C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through - P.S. Urla District Raipur C.G., Chhattisgarh

---- Respondent

For Appellant : Shri L.C. Dash, Advocate.

For Respondent/State: Shri Mahesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****07/02/2019**

1. This appeal has been preferred against judgment dated 17-12-2012 passed in Special Criminal Case No.65/2011 by the Special Judge, (NDPS) Raipur, Distt. Raipur, C.G. convicting the appellant under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and sentencing him with R.I. for 3 years along with fine Rs.25000/- with default stipulation.
2. The case of the prosecution, in brief, is this, that ASI Chetan Singh Sahu (PW-8) was present along with staff in the place of blockade in Village Achholi and was checking vehicles. The appellant arrived on the spot on a motorcycle bearing registration number, CG 04 DV 5599 carrying one airbag. Having suspicion regarding content of the bag, the appellant was served with a notice under Section 50 of the NDPS Act and after following the provisions under the NDPS Act he was duly searched by the ASI Chetan Singh Sahu (PW-8). In the search of his bag 9 kg Ganja was found. Test procedure for

identification of the article recovered was carried out on the spot and found that the recovered material was Ganja. Weightment procedure was carried out and after that samples were prepared and the articles were seized vide seizure memo Ex.-P/8. After completion of all the procedure on the spot of incident, ASI Chetan Singh Sahu (PW-8) lodged the FIR, Ex.-P/19 registering the offence against the appellant, in which he himself was the informant. The investigation was completed. Samples were sent for FSL examination and according to the report received from the FSL vide Ex.-P/22, the contents of the samples were narcotic substance Ganja. Charge sheet was filed before the concerned Court.

3. The appellant was charged with offence under Section 20(B)(ii)(b) of the NDPS Act, to which the appellant denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication. No witness was examined in defence.
5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that conviction against the appellant is bad in law as it was not supported with any evidence of prosecution beyond reasonable doubt. All the independent witnesses had turned hostile and not supported the prosecution case. I.O. Chetan Singh Sahu (PW-8) is himself the complainant of this case and it is against the ratio laid down by Hon'ble the Supreme Court in the matter of **Mohan Lal Vs. The**

State of Punjab, (2018) 2 SCeJ 1314. Therefore, the appellant is entitled for acquittal.

7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt. The ratio in the case of **Mohan Lal Vs. The State of Punjab** (supra) is not applicable in this case. Therefore, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. ASI Chetan Singh Sahu (PW-8) has given statement regarding conducting search of the appellant, recovery, seizure and other proceedings of investigation including lodging of the FIR by him vide Ex-P/19. The independent witnesses of search and seizure, Kamta Sahu (PW-2) and Gopal Dhruw (PW-3) have not supported the prosecution case, because of which they were declared hostile. Rest of the witnesses examined by the prosecution are not connected with the search and seizure and they have not made any statement in this respect. It is clear from the perusal of the statement of Chetan Singh Sahu (PW-8) that he himself is the person who has made the search, seizure and thereafter has lodged the FIR in the capacity of complainant and then has also completed further investigation in this case.
10. In the matter of **Mohan Lal Vs. The State of Punjab** (supra) Hon'ble the Supreme Court has held in paragraph No.25 that:-

“**25.** In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation

from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

11. After due consideration on all the evidence and material present in the record and after following the ratio laid down in the matter of **Mohan Lal Vs. The State of Punjab** (supra), I am of this opinion that in this case conviction against the appellant is unsustainable.
12. Consequently, the appeal is allowed. Conviction of the appellant under Section 20(B)(ii)(b) of the NDPS Act is set aside. He is acquitted of the charges against him. Fine amount, if deposited by the appellant, shall be refunded to him. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge