

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 31-01-2019****Delivered on 08-03-2019****CRA No. 955 of 2012**

- Ramkumar Verma s/o. Kejram Verma, aged about 50 years, r/o. Village Jota, Police Station Pathariya, District Mungeli (CG).

---- Appellant**Versus**

- State of Chhattisgarh through Station House Officer, Police Station Pathariya, Dist. Bilaspur (CG).

---- Respondent

For Appellant : Mr. Amit Singh, Advocate.

For respondent/State : Mr. Raghavendra Verma, G.A.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 20-09-2012 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Bilaspur, District Bilaspur (CG) in Special Case No. 9 of 2012 wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) & 20 (a)(i) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for eight years and to pay fine of Rs.10000/- and RI for five years and

to pay fine of Rs.5000/- with default stipulations. Both the sentences are directed to run concurrently.

2. As per version of prosecution, on 10-5-2012 Incharge of Police Station Pathariya namely Rajkumar Sori received information from informer (Mukhbir) that one person namely Ramkumar Verma of village Jota had hidden and kept Ganja inside the paddy-grass of his house. This information was recorded in Rojnamcha Sanha and same was sent to higher authorities and two independent witnesses were called. Information was sent to higher authorities, thereafter the Police Officer rushed to the spot along with independent witnesses and police personnel. Notice was served under Section 50 of the Act, 1985 to the appellant and after search, 17 kgs and 600 grams of Ganja in three boxes were recovered and again 33 plants of Ganja which were planted were also recovered from back side of the appellant's house. 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) Mandatory provisions of the Act, 1985 have not been complied with by the authorities, therefore, conviction of the appellant is not liable to be sustained.

- ii) Seized articles were sent to FSL on 22-5-2012 i.e., 12 days after seizure of material, but no explanation was given by the prosecution for this delay in sending the seized material.
- iii) Contrabands were not seized from the exclusive possession of the appellant. It is recovered from verandah and kitchen garden where any-body can enter and there was no obstacle to enter there.
- iv) PW/8 Kirit Ram Joshi has admitted in cross examination (para) that there is overwriting regarding quantity of Ganja plants in seizure record.
- v) The map prepared by Patwari is highly doubtful, not upto mark and also supported by spot map prepared by the Investigating Officer.
- vi) The trial Court has discarded the evidence of PW/3 Rajendra Singh @ Gurubaksh Singh which is not proper.
- vii) Policemen were already there in the house of the appellant before reaching the police party, but their presence was suppressed by the Investigating Officer.

Viii) The trial Court has not evaluated the evidence in its true perspective, therefore, same 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. Sub Inspector of Police Station, Pathariya namely Rajkumar Sori (PW/9) deposed before the trial Court that he received information from Mukhbir on 10-5-2012 against the appellant that is why he recorded this information in Rojnamcha Sanha as per Ex.P/24 and information was sent to Sub Divisional Officer (Police) Mungeli through Constable Domru Singh Duruv (PW/). Thereafter, two independent witnesses were called and he rushed to the spot with independent witnesses and police personnel. He gave notice in writing to the appellant that he is entitled to be searched by Gazetted Officer or by Magistrate, but 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, in one plastic bag 20 packets of Ganja was found and two other boxes were found in which Ganja was found. Again 33 plants of Ganja were found in the kitchen garden of the appellant. Articles which were seized were weighed and it was found to be 17 kgs and 600 grams. Two samples of 50 grams each were separated and sealed. The specimen seal was also prepared. Seizure of seized contraband article Ganja and seizure of 33 number of plants were made in writing. Proceeding of seizure and search was informed to the Sub Divisional Officer (Police) Mungeli. Seized articles were deposited in safe custody of Malkhana of Police Station. Samples were sent to FSL and as per report of FSL as per Ex.P/33, test of Ganja was found positive. From the report of FSL, it is clear that samples and 33 number of plants were sent to FSL for examination and in all the articles and plants, test of Ganja was found positive.

7. Constable Domru Singh Dhruv (PW/1) deposed that he deposited the information against the appellant in the office of the Sub Divisional Officer (Police) Mungeli on 10-5-2012 at about 11.55 am. PW/2 Yogesh Khalkho, Patwari deposed that plants were found in the kitchen garden of the appellant and he prepared the map and as per the map kitchen garden is adjoining to the house of the appellant in which paddy-grass was also kept. Version of Sub Inspector (PW/9) is supported by version of

Rajendra Singh @ Gurubaksh Singh (PW/3) who is witness of seizure. It is again supported by version of PW/4 Vijay Kumar, Head Constable, Kedar Karmakar (PW/6), and PW/8 Kirit Ram Josh, Head Constable who is Incharge of Malkhana who deposed that he kept the seized articles in safe custody of Malkhana as per Ex.P/22 and P/23. Constable Ashok Kumar Pandey (PW/7) deposed that he received information of informer in the office of Sub Divisional Officer (Police) Mungeli. Constable Bhopsingh Rajput (PW/5) deposed that he submitted the samples in FSL and received acknowledgement s per Ex.P/21 and submitted the same in Police Station Pathariya.

8. From the entire evidence it is established that information was sent to higher authorities and 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). 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.

9. From the evidence it is established that the appellant was in possession of contraband article Ganja. 33 plants of Ganja were found in the kitchen garden adjoining to the house of the appellant. Looking to the Ganja seized in his possession and varandah of the house and again looking to the number of plants, it can be inferred that the appellant has cultivated the cannabis plants. In absence of any explanation, there is nothing on record that any other person is involved in the crime in question. All the witnesses have deposed in affirmative regarding seizure of contraband article Ganja from the possession of the appellant. There is no material contradiction which warrants interference by this court to the judgment of conviction. Seized Ganja 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 and cultivation of Ganja is defined under Section 20(a)(i) 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 which cannot be termed as harsh, disproportionate or unreasonable .

10. 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