

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 20-11-2019

Delivered on : 20-12-.2019

CRA No. 1002 of 2017

- Mithun Rawani S/o Late Ratan Rawani, Aged About 30 Years R/o Near Durga Temple, Salanpur, Akas Kanali, Dhanbad, Police Station Rajgarh, District Dhanbad, Jharkhand. Present Address House Of Harjinder Singh, Rupnarayanpur, District West Medinapur, West Bengal.

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station G R P Raipur, District Raipur, Chhattisgarh.,

---- Respondent

For Appellant : Mr. K.K. Dixit,, Advocate.

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

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 15-6-2017 passed by Special Judge (NDPS Act), Raipur (C.G.) in Special Criminal Case No. 254 of 2016, wherein the said court convicted the appellant for commission of offence under Section 15 (b) of Narcotic Drugs & Psychotropic Substances

Act, 1985 (for short "the Act, 1985") for having illegal possession of poppy straw and sentenced him to undergo R.I. for four years and fine of Rs. 20,000/- with further default stipulations.

2. As per case of the prosecution, on 10-09-2016 the Investigating Officer received information about possession of poppy straw by one person at Railway Station, Raipur at platform No.1. On the basis of information panchnama (Ex.P/1) was prepared for search without warrant and two independent witnesses were called. After legal formalities, Investigating Officer reached to the spot where the appellant was found. He has been informed about his right to be searched by Gazetted Officer or Magistrate. Appellant was having two bags and after search it was found to be having two bags which were seized and after weighing the article one bag was found to be 24 kgs of poppy straw and other bag was found having 18 kgs of poppy straw. One sample of each packet of 50 grams was separated and it was marked as A-1 and A-2 which were sealed on the spot. Seized articles were kept in Malkhana in safe custody and it was sent to FSL for examination where test of poppy straw was found positive. The matter was investigated, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned

above.

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

(I) Independent witnesses have not supported the version of prosecution and weighing Panchnama was also not supported by independent witnesses.

(ii). As per version of Investigating Officer, the bag was not found in the hands of the appellants, but it was on floor near the appellant.

(iii) Omissions and contradictions in the statement of the Investigating Officer and Head Constable (PW/6) have been overlooked by the trial court.

(iv) Investigating Officer failed to comply with the provisions of Sections 52, 55 and 58 of the Act, 1985, therefore, finding of the trial court is not liable to be sustained.

4. On the other hand, learned State counsel would submit 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. I have heard learned counsel for the parties and perused the records.
6. The first question for consideration before this Court is whether the appellant was in possession of contraband article poppy straw. Sub-Inspector- R.K. Borjha (PW-7) of Government Railway Police Station, Raipur, CG, deposed before the trial court that on the date of incident i.e., on 10-9-2016 at 13.30 hours, he was on duty for patrolling and reached near bridge at platform No.1 of Raipur Railway Station. He found the appellant who was carrying air bag. This witness has informed him about his right to be searched by Gazetted Officer or by Magistrate and the appellant gave consent from searching by this witness. After searching he found two bags from the possession of the appellant in which 24 packets of poppy straw was found which was 42 kgs. In one air bag 20 packets were found containing 1 kg of poppy straw in each packet and in another packet 18 packets were found containing 1 kg of poppy straw in each packet. This witness has mixed the entire articles and took sample from the articles and marked as A-1 and A-2 which were sealed on the spot. As per version of this witness, seized articles were deposited in Malkhana for safe

custody and samples were sent through constable to FSL who received acknowledgement as per Ex.P/15. Report of FSL was received as per Ex.P/28 and as per report of laboratory test of opium was found positive. Version of this witness is unrebutted during cross examination. His version is supported by Head Constable Dasairam (PW/5) who was Incharge of Malkhana in the said police station who received article from Inspector R.K. Borjha (PW/7) and deposited the same in Malkhana. As per version of this witness, entry was made in register on 10-9-2016 as per Ex.P/31. Sample was withdrawn on 12-9-2016 and handed over the same to Constable Rajendranath Pandey (PW/3) for depositing the same at FSL for examination who deposited the article in FSL and received acknowledgement as per Ex. P/32. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. From their evidence it is established that the appellant was in possession of 42 kgs of poppy straw which was confirmed in laboratory test.

7. True it is that Rajkumar Sonkar (PW/1), Sega Sonkar (PW/2) and Bachchelal Sonkar (PW/4) have not supported the version of prosecution regarding seizure of weighing, but the fact remains that version of Inspector R.K. Borjha (PW/7) and Dhanamraj Dhruv (PW/8) cannot be discarded because of non

support of these witnesses. If these witnesses were not present at the time of searching of seizure and weighing, they are not witnesses to the incident, but looking to the record, it appears that they have signed in the documents produced before the trial court, therefore, it may be said that these witnesses have suppressed the real fact before the trial court, therefore, their version is unreliable. Version of Police Officer is supported by documents Ex.P/18, P/19,P/20, P/14 and P/15 and P/16. It is further supported by version of Rajendranath Pandey (PW/3) who deposited the seized article in FSL. Rojnamcha Sanha was proved by PW/5 Dasairam.

8. On an overall assessment of the evidence, it cannot be said that the appellant has been falsely roped in the present case. Version of Police Officer inspires confidence and same is corroborated by other witnesses and relevant documents. After re-assessing the entire evidence, this court has no reason to say that the appellant was not in possession of 42 kgs of poppy straw. In view of the above, there is nothing on record to take a contrary view what is recorded by the trial court.
9. From the entire record, it is clear that a notice was served to the appellant as per Section 50 of the Act, 1985 and property was kept in safe custody of Malkhana as per Section 55 of the Act, 1985 and report regarding seizure and arrest was sent to

higher authorities as per Section 57 of the Act, 1985, therefore, argument advanced of behalf of the appellant that procedure was not followed as per the Act, 1985 is not acceptable.

10. The quantity of contraband article seized in the present case is more than small quantity. As per the notification, quantity of 1 kg of poppy straw is small quantity and more than 50 kg. is commercial quantity. The quantity of contraband article seized in the present case is 42 kgs which is neither small nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 15(b) of the Act, 1985 and deterrent punishment is required under the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed. For commercial quantity i.e., 50 kgs of contraband article, Section 15(c) is applicable and for that minimum sentence is ten years jail term. The articles seized from the appellant is not commercial quantity, but it is closed to commercial quantity.

Heard on the point of sentence.

11. Looking to the quantity of contraband article poppy straw, the trial court awarded jail sentence of four years to the appellant which 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.

12. Accordingly, the appeal is liable to be and is hereby dismissed.

The appellant is reported to be in jail, therefore, no further order of his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju