

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 11.04.2019

Judgment Delivered on :16/05/2019

CRA No. 1181 of 2017

1. Kamal Singh S/o Suraj Singh Rajput, Aged About 32 Years, Caste-
Lodhi, R/o Village: Post & Police Station: Sonagir, District- Datia,
Madhya Pradesh
2. Santosh Singh S/o Kailash Singh Rajput, Aged About 32 Years, Caste
Lodhi, R/o Village: Guvapali, Police Station Babina, District- Jhansi
Uttar Pradesh

---- Appellants

Versus

- State Of Chhattisgarh, Through The Police Station- Mainpur, District:
Gariyaband, Chhattisgarh

-----Respondent

For Appellants	: Mr. Devarshi Thakur, Advocate
For Respondent/State	: Mr. Samdarsh Nirankari, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

16/05/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 21.07.2017, passed by the Learned Special Judge, (N.D.P.S. Act), Raipur (C.G.), in Special Sessions Trial No. 279/2016 convicting the appellants for the offence under Section 20(ii)(B) of N.D.P.S. Act and sentencing each of them to undergo R.I. 05 years and to pay fine of Rs.20,000/- with default stipulation.

2. The case of prosecution in brief is this that on 02.10.2016, Sub-Inspector- Narendra Sahu (PW-9) received one information from the informer that two persons are transporting Ganja in the bus No. CG.-07-LS-3400. The entry of the information was made in the station House diary and a Mukhabir Panchnama was prepared vide Ex.-P/2. An intimation was immediately dispatched to the Superior Police Authority in Mainpur, for the reason that there was no time to obtain search warrant before making any search. Narendra Sahu (PW-9) then arrived on the spot and he informed the appellants that they have right to be searched in presence of a Magistrate or a Gazetted Officer. Both the appellants then gave consent for search to Narendra Sahu (PW-9) vide Ex.-P/4. After initial search of the members of the raiding party, the appellants were searched vide Ex.-P/8 & Ex.-P/9 and found to be in possession of two trolley bags and two back packs. On opening the trolley bags and the back packs in possession of appellant No.2, Santosh Singh, it were found containing six packets of Ganja which was recovered vide Ex.-P/10 and Ex.-P/11. Similarly, two packets of Ganja were also found in the bag of appellant Kamal Singh vide Ex.-P/14. The contents of the packets were then tested vide Ex.-P/12 and it was confirmed that the material was Ganja, that is a narcotic substance. The weighment procedure was carried out, in which firstly the electronic balance was verified vide Ex.-P/13 and on weighing all the contents of the bags, the total weight of the Ganja was found to be 15 Kg, which was recovered from the appellant No.2, Santosh Singh vide Ex.-P/16 and 14 Kg Ganja which was recovered from the appellant No.1, Kamal Singh vide Ex.-P/17. The contents of all the packets were then taken out and a homogeneous mixture was

prepared out of the material recovered from the appellant No.1, Kamal Singh. Two samples were prepared which were marked as Sample A-1 and Sample B-1 vide Ex.-P/15. At the same time, out of the homogeneous mixture of the material recovered from the appellant No.2, Santosh Singh, two samples of 100 gm each were prepared vide samples C-1 and D-1. The remaining Ganja was again packed and sealed and a Panchanama of sealed articles was similarly prepared vide Ex.-P/20. The seizure of 14 Kg Ganja was made from the possession of appellant No.1- Kamal Singh vide Ex.-P/21 and seizure of 15 Kg Ganja was made from appellant No.2- Santosh Singh, vide Ex.-P/22. The appellants were then arrested on the spot by Sub-Inspector, Narendra Sahu (PW-9). The F.I.R. vide Ex.-P/49 was lodged by Narendra Sahu (P.W.-9) and a complete report Ex.-P/50 was sent to the S.D.M. Police, Mainpur. The samples of Ganja were sent for F.S.L. examination. F.S.L. report vide Ex.-P/51 was received, which confirms the presence of narcotic substance i.e. Ganja. After completion of investigation, charge-sheet was filed against the appellants.

3. The trial Court charged the appellants with offence under Section 20(2)(b) of N.D.P.S. Act, to which they denied and prayed for trial. On completion of prosecution evidence the appellants were examined under Section 313 of Cr.P.C., in which they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, the appellants has been convicted and sentenced as aforementioned.
4. It is submitted by the learned counsel appearing on behalf of the

appellants, that the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the conviction of the appellants is bad in law. No notice was served upon the appellants under Section 50 of N.D.P.S. Act, therefore, the non-compliance of Section 50 of the Act vitiates the trial. The independent witnesses of search, seizure and weighment procedure have not at all supported the prosecution case. The conviction is based only upon the evidence of I.O. i.e. Narendra Sahu (PW-9), who is not a reliable witness, for the reason that the timings shown in various Panchanama do not match which shows that the memos have been concocted in order to falsely implicate the appellants. It is submitted that in this case as the prosecution has failed to give evidence in accordance with the provisions of N.D.P.S. Act, therefore, the onus had not shifted upon the accused to prove his innocence. Relying on the statement and the judgment of Supreme Court in **Mohan Lal Vs. State of Punjab**, AIR(SC)-2018-0-3853, it is submitted that the complainant and the investigator of the case is the same person i.e. Narendra Sahu (PW-9), which itself is a strong reason to hold that the trial of the appellants is vitiated. Further reliance has been placed on the judgment of Supreme Court in **Mohinder Singh Vs. State of Punjab**, AIR(SC)-2018-0-3798. It is also argued that the verdict of Hon'ble Supreme Court in **Varinder Kumar Vs. State of Himachal Pradesh**, SCALE-2019-3-50, is not applicable to this case because the principle exists that

complainant and I.O. cannot be the same person. Therefore, conviction based only on the evidence of I.O. is bad in law. Hence, It is prayed that appellants may be acquitted of charge.

5. Counsel for the State opposes the grounds raised in this appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Despite the hostility of the independent witnesses, the evidence of the Investigating Officer and the other police officers, who were the members of the raiding party is wholly reliable, therefore, the case of conviction against appellants is clearly made out.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
8. The first objection raised is considered. It is clear case where there was no requirement of search of the person of the appellants and annex which were baggages in possession of the appellants that were subject to search. Section 50 of the N.D.P.S. Act very clearly provides that this provision for search of person nothing other than that. The person means the body of a person and other annex which are found in the body or worn of the body of the person. It has been held in **State of Himachal Pradesh Vs. Pawan Kumar**, 2005 AIR SCW 2154 and in catena of

judgments in which the view is very clear that search of bag, baggage and belonging of a person shall not be subject to compliance of Section 50 of the N.D.P.S. Act, therefore, the ground raised in this appeal on this point is without any substance.

9. The second ground in the appeal is the reliability of the evidence of the I.O. Narendra Sahu (PW-9). It is not disputed that other witnesses namely the independent witnesses of search and seizure and weightment have not supported the prosecution case and the conviction is totally based on the evidence of the I.O. Narendar Sahu (PW-9) and other witnesses of his team. The appellants relied on the judgment delivered by Hon'ble the Supreme Court in the matter of **Mohan Lal Vs. The State of Punjab**, AIR (SC)-2018-0-3853 which has been modified by the Bench of three Judges of Hon'ble the Supreme Court in the matter of **Varinder Kumar Vs. State of Himachal Pradesh**, SCALE-2019-3-50, according to which the ratio laid down in *Mohan Lal* case (supra) shall not be applicable in cases of prior to the date of judgment in *Mohan Lal* case (supra). Therefore, the ratio in *Mohan Lal* case that in case the I.O. and the complainant is the same person, the trial shall be regarded as vitiated, is not applicable in this case. This is an incident of a date prior to the date of judgment of *Mohan Lal* case (supra). It was argued by the learned counsel of the appellants that the ratio that the I.O. and the complainant should not be the same person still holds ground, is not in any doubt. Even

then this view of Hon'ble the Supreme Court itself in the matter of **Baldev Singh Vs. State of Haryana**, 2016 Cr.LJ 154 and in **Tahir Vs. State**, 1996 (3) SCC 338 that there is no such rule that evidence of police witness shall always be disbelieved. The only rule of caution is applicable and after careful scrutiny if the evidence of such police witness inspires confidence in that case conviction can be based on such evidence without the support of evidence of independent witnesses, therefore, taking into consideration these principles of law, evidence in this case is appreciated.

10. S.I. Narendra Sahu (PW-9) has given statement accordingly to prove the procedure of search, seizure, weightment, sample etc. as it is mentioned in detail hereinabove in paragraph No.2. On going through the cross-examination of S.I. Narendra Sahu (PW-9), it is found that there is no such statement made by him so as to find that his statement made in examination-in-chief has been contradicted or falsified. Apart from that, there is no suggestion that the witness had any enmity or had any specific reason to falsely implicate or make false statement against them. Therefore, credibility of this witness has not been put to any challenge by defence.
11. The seized contraband samples etc. were handed over to Malkhana in police station and were deposited in safe custody, regarding which Head Constable Purshottam Yadav (PW-10) has given statement before the Court which has remained unrebutted. Some minor discrepancies which has been committed in his cross-examination are not material. The FSL report Ex.-P/51 has confirmed that the samples prepared from the recovery made from

the appellant contained Ganja, which further confirms that the appellants were engaged in transporting the contraband article Ganja. Therefore, after appreciation of trustworthy and reliable evidence of the I.O. Narendra Sahu (PW-9) the trial Court has come to the conclusion of convicting the appellants under Section 20(ii)(B) of the N.D.P.S. Act, which does not suffer from any infirmity.

12. Therefore, after due consideration, I do not find any substance in this appeal, which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge