

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.223 of 2010**

Sanjeev Dakuwa, S/o. Ratnakar Dakuwa, aged about 20 years, R/o. Village Luchapada, Police Station Bada Bazar, District Ganjam (Orissa)

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Saraipali, District Mahasamund (CG)

---- Respondent

For the appellant : Shri Pushpendra Kumar Patel,
Advocate

For the respondent/State: Shri VB Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****04.02.2019.**

1. This appeal is preferred against the judgment dated 24.12.2009 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act 1985'), Mahasamund (CG) in Special Session Trial No.01/2000 wherein the said Court convicted the appellant for commission of offence under Section 20(b)(ii)(C) of the Act and sentenced him to undergo Rigorous imprisonment for ten years and to pay fine of Rs.1 lakh with default stipulation.

2. As per the prosecution story, on 24.04.2009 at about 14.40 hours Incharge of Police Station Saraipali, Inspector Chandra Shekhar Dhruw (PW-6) received information from one informer (mukhbir) that one person is coming in a bus having contraband article Ganja with him. The said information was recorded in

Rojnamcha Sanha No.1009 and the same was sent to Superior Police Officer SDO(P) through Constable Satish. One panchnama was also prepared and then the said Police Officer rushed to the spot along with other police personnel and independent witnesses. The appellant was caught and he was served notice under Section 50 of the Act 1985 for invoking his right to be searched by Magistrate or the investigating officer. The appellant opted to be searched by the said Police Officer and on search three suitcases and one bag were found in his possession and when it was opened contraband article Ganja was found in the suitcases and the bag. The article was weighed through electronic weighing machine and in suitcase contraband article was found to be 13.550 kg, 11.130 kg and 12.150 kg and total measuring 32.340 in three bags. The articles were sealed and then handed over to Incharge of Malkhana namely Head Constable Gokul Pradhan(PW-2). As per the version of Gokul Pradhan (PW-2) he kept the seized articles in Malkhana in safe custody and as per the version of Constable Alekh Barik (PW-4) he had taken the samples 9 in number to Forensic Science Laboratory, Raipur and deposited the same for examination. Ex-P/20 is the examination report of the Laboratory in which test of the Ganja was found positive in all 9 samples bearing No.A-01 to E-01.

3. From the evidence of Head Constable Nand Kumar Das (PW-3), it is established that information of the offence is received by him from the office of Sub Divisional Officer (P) as per Ex-P/13 and information regarding seizure and search was received by

him in the said office as per Ex-P/14. From the evidence of Chandra Shekhar Dhruw (PW-6) and Nand Kumar Das (PW-3) it is established that provisions of Section 42(2) and Section 57 of the Act 1985 are complied with. From the evidence of Chandra Shekhar Dhruw (PW-6) and Gokul Pradhan (PW-2) it is established that the sealed articles were kept in safe custody in the Malkhana and provisions of Section 55 is complied with. As the search is made on suitcase and bag, the same is not personal search on the body of a human being therefore, Section 50 of the Act, 1985 has no application in the present case though before searching the articles, the investigating officer has complied with Section 50 of the Act, 1985 also.

4. Looking to the entire evidence, it cannot be said that provisions of the Act, 1985 has not been complied with as per the arguments advanced by the appellant, therefore, arguments on behalf of the appellant is without substance.

5. Version of the police personnel is supported by Sevaram Agrawal (PW-1) in whose presence search was made. Though Ganesh Bhoi (PW-5) deposed that weighment of the article was done in the Police Station but version of this witness is not sufficient to rebut the evidence of the Inspector Chandra Shekahr Dhruw (PW-6) and other witnesses.

6. On overall assessment of the evidence, it is established that the appellant was in possession of the contraband article Ganja to the tune of more than 34 kg.

7. 20 Kg Ganja is commercial quantity and looking to the quantity of Ganja seized in the present case, it is established that

the appellant was in possession of commercial quantity of Ganja which is punishable under Section 20(b)(ii)(C) of the Act, 1985 for which the trial Court convicted the appellant and this Court after reassessing the evidence has no reason to substitute a contrary finding. Accordingly, conviction of the appellant under Section 20(b)(ii)(C) of the Act, 1985 is hereby affirmed.

8. Heard on the point of sentence.

The trial Court awarded minimum sentence prescribed for the offence and less than minimum cannot be awarded. Therefore, sentence part is also not liable to be interfered with.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant is in jail therefore, no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**