

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 278 of 2003**

- Santosh Kumar Dubey S/o Pyare Lal Dubey, aged about 36 years, Occupation Shopkeeper, R/o village Mohabhata Bemetara District.- Durg (C.G.).

----Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant : Shri Shantosh Bharat, Advocate.
 For Respondent/State : Shri Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****20.02.2020**

(1) When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of High Court Legal Service Committee to represent the appellant.

(2) On being asked to Shri Shantosh Bharat, who is one of the empanelled lawyers of High Court Legal Service Committee in this

regard, he is ready and willing to argue the matter. Therefore, in the interest of justice, Shri Shantosh Bharat, who is one of the lawyers in the panel of High Court Legal Service Committee, is appointed as counsel to represent the appellant.

(3) Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

(4) This appeal arises out of the judgment of conviction and order of sentence dated 21.01.2003, passed by the Special Judge (N.D.P.S. Act), Bastar at Jagdalpur in Special Criminal Case No. 45/2002, convicting the accused/appellant for the offence punishable under Section 20 (b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "NDPS Act") and sentencing him to undergo rigorous imprisonment for three years and six months with fine of Rs. 10,000/-, in default of payment of fine to further undergo rigorous imprisonment for nine months.

(5) As per prosecution case, on 03.10.2002, at about 12.15 pm Aleem Khan, Sub Inspector, Nagarnaar Police Station received information from informant that at village Dhanbooji, Mandi Naka at National Highway No. 43, one person is standing with *ganja* in a bag. The said information was reduced into writing in Rojnamchasanha vide Ex.P/2 and forwarded to the Superior Officer vide Ex.P-13. The police party went to the spot, apprehended the accused, in presence of witnesses namely Rainu & Amit Pandey gave him notice (Ex.P-3) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he

consented to be searched by the police. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-4 and nothing was found. On search of the bag, which the appellant was carrying, Ganja like substance was recovered and on being examined by smelling and burning, it was found to be Ganja vide Ex.P-5 &P-6. On weighment being done of the contraband it was found to be 5.450 kgs. Two samples, each of 30 gms, were drawn from the said contraband and seizure memo (Ex.P-8) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-15, the accused was arrested vide Ex.P-09, Intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Bastar at Jagdalpur (C.G.). After reaching police station, FIR (Ex-P/18) was registered against the appellant under Section 20(b) of the NDPS Act. The seized contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 15.01.2003 with intact seal and report of FSL is Ex.P-25, which confirms the seized contraband to the Ganja.

(6) After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (b)(ii)(B) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charges against the accused/appellant under Sections 20 (b)(ii)(B) of the NDPS Act. Accused denied the charges levelled against him and prayed for trial.

(7) So as to hold the accused/appellant guilty, the prosecution examined 4 witnesses namely- Padam Rajaiya (PW-1), Amit Pandey (PW-2), Jankush Toppo (PW-3) & Aleem Khan (PW-4). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of the accused person.

(8) The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in paragraph 4 of this judgment.

(9) Learned counsel for the appellant/accused submits the appellant has been falsely implicated in the crime in question as there is no evidence on record to connect the appellant with the said crime. He submits that compliance of the mandatory provisions under Sections 41, 42 and 50 the NDPS Act has not been made while making search and seizure of the alleged *Ganja*. He further submits that in the instant case, independent witness namely Amit Pandey (PW02) has not supported the case of the prosecution stating that his signature was obtained in all the concerned papers at the Police station, not at the place of occurrence. Alternatively he also submits that appellant was 36 years of age at the time of incident and now he is above 52 years and looking to the fact that incident happened on 03.10.2002 near

about 18 years were elapsed, it is prayed that the appellant may be given benefit of Probation of Offenders Act and may be sentenced to the period already undergone by him as the appellant remained in jail for about 11 months & seventeen days.

(10) Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions contained in Sections 41,42 & 50 of the NDPS Act have been duly complied with by the prosecution while making search and seizure of Ganja, such as, notice under Section 50 of the NDPS Act was given to the appellant, thereafter, personal search of the police party and the witnesses was also made by the appellant and then consent was given by the appellant, and therefore, the appellant has rightly been convicted & sentenced by the Trial Court, which does not call for any interference in the instant appeal.

(11) I have heard learned counsel appearing for the parties and perused the material available on record.

(12) Padam Rajaiya (PW01) - Head constable has proved this fact that in presence of the independent witness 5.450 kg contraband (*ganja*) was seized from the accused and thereafter weighment panchanama was prepared. Thus, there is no reason to disbelieve the statement of the said witness.

(13) Amit Pandey (PW-2)- Independent witness has stated that he signed all the relevant documents such as Exs. No. P/2 to P/9 and they are prepared in his presence.

(14) Jankush Toppo (PW-3)- Head Constable has stated that he

received seized articles and kept those seized articles in malkhana in safe custody and he also proved the document (entry of seized articles) vide Ex. P/11-C and samples were sent for chemical examination.

(15) Aleem Khan, (PW04), Sub Inspector received information from an informant that at village Dhanbooji Mandi Naka on National Highway No. 43, one person is standing with *ganja* in a bag. The said information was reduced into writing in Rojnamchasanha vide Ex.P/2 and forwarded to the Superior Officer vide Ex.P-13. The police party went to the spot, apprehended the accused, in presence of witnesses namely Rainu & Amit Pandey gave him notice (Ex.P-3) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-4 and nothing was found. On search of the bag, which the appellant was carrying, Ganja like substance was recovered and on being examined by smelling and burning, it was found to be Ganja vide Ex.P-5 &P-6. On weighment being done of the contraband it was found to be 5.450 kgs. Two samples, each of 30 gms, were drawn from the said contraband and seizure memo (Ex.P-8) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-15, the accused was arrested vide Ex.P-09, Intimation of the entire proceedings was forwarded

to the office of Superintendent of Police, Bastar at Jagdalpur (C.G.). After reaching police station, FIR (Ex-P/18) was registered against the appellant under Section 20(b) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 15.01.2003 with intact seal and report of FSL is Ex.P-25, which confirms the seized contraband to the Ganja.

(16) Looking to the statements of prosecution witnesses, in particular, the statement of investigating Officer- Aleem Khan (PW04), Sub Inspector, it is apparent that the procedure prescribed under Section 50 of NDPS Act had duly been followed by the Investigating Officer while making seizure of the contraband ganja and there is no reason to disbelieve the statements of Investigating Officer and other police officials.

(17) It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other

persons and it is not proper to distrust and suspect him without there being good grounds therefor.

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police Officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [**Pramod Kumar V. State (GNCT) of Delhi** reported in **AIR 2013 Supreme Court 3344**]. The same principle of law has been reiterated by the Supreme Court Judgment in the matter of **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554** and in paragraph 10 it has been observed as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

(18) In the present case, though the independent witness- Amit Pandey (PW02) has not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

(19) Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding him guilty under Section 20 (b) (ii) (B) of the NDPS Act cannot be faulted with and the same are hereby affirmed.

(20) So far as the sentence of the appellant under Section 20 (b) (ii)(B) of the NDPS Act is concerned, considering the fact that the incident occurred way back in the year 2002, the appellant is facing trial since 2003 and the fact that the appellant has already remained in jail for 11 months & 17 days and at present he is on bail, this Court is of the opinion that the ends of justice would be

served if he is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation imposed by the trial Court intact.

(21) Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20 (b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, his jail sentence is reduced to the period already undergone by him. However, the fine sentence with default stipulation as imposed by the trial Court shall remain as it is.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge

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