

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1069 of 2003**

1. Rasikraj @ Rasiko S/o Haldhar Kashyap, aged about 35 years, R/o Bahera, Police Station Kopsara, District Kalahadi (Orissa).

---- Appellant**Versus**

1. The State of Chhattisgarh.

---- Respondent

For Appellant	:	Shri C.R. Sahu, Advocate.
For Respondent/State	:	Shri Anand Verma, Dy. Govt Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****22/06/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 19/09/2003 passed by Special Judge, (N.D.P.S. Act) Raipur in Special Criminal Case No. 47/2002; whereby the appellant Rasikraj @ Rasiko stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act")	R.I. for 3 years & fine of Rs. 5,000/- in default of fine additional R.I. for 2 months.

- 3) Case of the prosecution in brief is that on receiving secret information on 04/06/2002 that the appellant was carrying Ganja and villagers of village Mama-Bhanja have caught hold of the appellant alongwith Ganja, Inspector L.K. Gayakwad prepared secret information Panchnama vide Ex. P-10, forwarded the same to Dy. Superintendent of Police and recorded it in the Rojnamchasanha. He also prepared the Panchnama Ex. P-4 for search without warrant. Alongwith witnesses he proceeded for

the indicated place where the appellant was caught hold by villagers at village Mama-Bhanja in Manas Bhawan with bag (**Ataichi**). The appellant was informed about his legal rights of being searched by Gazetted Officer or Magistrate or the Police vide Ex. P-1. After consent being given by the appellant vide Ex. P-2, his personal search was made vide Ex. P-4 and Ganja was seized from the bag carried by the appellant vide Ex. P-5. On weighment being done, the Ganja was found 6.500 Kg out of which 2 samples of 50 grams each were drawn and sealed. Sample Panchnama is Ex. P-6 and the seizure memo is Ex. P-7. The appellant was arrested vide Ex. P-8 and the FIR vide Ex. P-14 was registered. Seized article were deposited in Malkhana. Information regarding seizure of Ganja from the appellant and his arrest was sent to SDOP vide Ex. P-15. The samples were sent for chemical examination through Superintendent of Police Mahasamund vide Ex. P-16. As per FSL report the sample was found to be Ganja vide Ex. P-19. After recording the statements of the witnesses and completing the formalities of the investigation, charge sheet under section 20(b) of the NDPS was filed against the accused appellant.

- 4) The Trial Court framed charge against the accused/appellant under Section 20(b)(1) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 06 witnesses namely PW-01 Trilok Chand Jain, PW-02 Rajaram Diwan, PW-03 L.K. Gayakwad (Inspector), PW-04 Mannulal, PW-05 Ratiram (Constable) and PW-06 Chetan Yadav (Head Constable). The 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 and pleaded innocence and false implication. No defence witness was examined by the accused in his defence.
- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the

accused appellant as mentioned above in para 2 of this judgment.

- 7) Learned counsel for the appellant submits that there is total non-compliance of mandatory provision of Section 42 & 50 of NDPS Act. There is no independent witness who supported the prosecution case. The prosecution has failed to prove offence against the appellant. Only on the basis of evidence of the Investigating Officer who was interested in the case, conviction of the accused cannot be sustained, therefore, the appeal deserves to be allowed.
- 8) Alternatively, he submits that if this Court finally comes to the conclusion that the appellant is guilty of the offence under section 20(b)(1) of the NDPS Act, considering the fact that incident took place 18 years above, the appellant was young offender of 35 years at the relevant time and has no criminal antecedents, he has already remained in jail for about 361 days the appellant may be sentenced to the period already undergone by him.
- 9) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that there is no enmity of the appellant with the Investigating Officer and other witnesses of the Police squad. There is no reason to disbelieve the Investigating Officer in this case and strict compliance of all the mandatory provisions of the Act has been made by the Investigating Officer. The Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) It is not disputed by the appellant and the respondent counsel that as per FSL report Ex. P-19 the articles sent for chemical analysis were found to be Ganja.

- 12) The conviction is based on the evidence of PW-03 L.K. Gayakwad (Inspector), PW-05 Ratiram (Constable) and PW-06 Chetan Yadav (Head Constable).
- 13) As per evidence of PW-03 L.K. Gayakwad (I.O.) on 04/06/2002 upon receiving secret information that the appellant was carrying Ganja and villagers of village Mama-Bhanja have caught hold of the appellant alongwith Ganja in his Bag, Inspector L.K. Gayakwad prepared secret information Panchnama vide Ex. P-10 and forwarded the same to Superintendent of Police and entry in this regard was made in the Rojnamchasanha. Thereafter, he alongwith the staff and two independent witness went to the indicated place where the accused was caught hold by the villagers at village Mama-Bhanja in Manas Bhawan with bag. The appellant was given notice vide Ex. P-1 regarding his search and upon receiving his consent for search by the Police vide Ex. P-2 his search was made and Ganja was seized from the bag which the appellant was holding vide Ex. P-5. On weighment being done, the Ganja was found 6.500 Kg out of which 2 samples of 50 grams each were drawn and the sample as well as the remaining Ganja were duly sealed. FIR vide Ex. P-14 was registered and appellant was arrested vide Ex. P-8. The seized article were deposited in the Malkhana and statements of the witnesses were recorded. The samples were sent to FSL for chemical examination vide Ex. P-16 and as per FSL report the samples were found to be Ganja.
- 14) From the evidence of PW-03 L.L. Gayakwad (I.O.) it is clear that while making search and seizure proceedings he complied with all the mandatory provisions of the Act. There is nothing in his cross examination which could make his evidence untrustworthy or doubtful. There is no evidence to show that the Investigating Officer was having any enmity with the accused appellant for his false implication. True it is that in this case the independent witness namely PW-01 Trilok Chand Jain, PW-02 Rajaram Diwan and PW-04 Mannu Lal have supported the prosecution case and PW-04 Mannu Lal admits his signature on all the

documents vide Ex. P-1 to P-8. Weighment panchnama is also proved by PW-02 Rajaram Diwan. PW-01 Trilok Chand Jain also admits his signature on the documents.

- 15) PW-05 Ratiram (Constable) and PW-06 Chetan Yadav (Head Constable) have duly supported the prosecution case and stated as to the manner the accused appellant was apprehended, after consent for his search was obtained and Ganja was recovered from the bag which the appellant was carrying. There is no reason to disbelieve the evidence of these witnesses merely because they are police personnel and were involved in the investigation.
- 16) It is well settled principle of law that a Police Officer can or cannot be a sole eye witness 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.
- 17) 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 trustworthy, 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. [*AIR 2013 Supreme Court 3344, Pramod Kumar V. State (GNCT) of Delhi.*]. The same principle of law has been reiterated by the Supreme Court 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 scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

- 18) The Trial Court in the impugned judgment has elaborately dealt with the entire evidence, oral and documentary adduced by the parties and recorded a finding that all the mandatory provisions of the Act have been duly complied with by the Investigating Officer while conducting search and seizure proceedings. From perusal of the evidence on record this Court finds no illegality or infirmity in the findings recorded by the Trial Court. Independent witnesses PW-1 Trilok Chand Jain, PW-02 Rajaram Diwan & PW-04 Mannu Lal have partly supported the prosecution case and PW-03 (I.O.) L.K. Gayakwad, PW-05 Ratiram (Constable) and PW-06 Chetan Yadav (Head Constable) have duly supported the prosecution case and have proved all the documents relating to secret information Panchnama, search, seizure, weighment, sampling, arrest and information to the higher authorities etc. The defence has not adduced any evidence which could suggest that the Investigating Officer or any Police personnel involved in the investigation was having any ill will or enmity with the accused appellant for his false implication in this case. Therefore, this Court is of the opinion that conviction of the accused appellant under section 20(b)(1) of NDPS Act is justified and needs no interference by this Court.

- 19) As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place around 18 years back, the age of the appellant at the relevant time is 35 years and at present he must be 53 years, the appellant is young offender having no criminal antecedents, quantity of Ganja i.e. 6.500 Kg, the fact that the appellant has remained in jail for 361 days, *keeping in view the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the trial Court intact.
- 20) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under section 20(b)(1) of NDPS Act, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs. 5,000/- with default stipulation imposed by the Trial Court shall remain intact. Since the appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge