

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 533 of 2003

Raghu, aged about 32 years, S/o Guru, Occupation Labour,
R/o Village Dhargudi, PS Kotpad, District Koraput (Orissa).

---Appellant

Versus

State of Chattisgarh through PS Nagarnar, District Bastar(CG)

---Respondent

For Appellant : Mr. Manoj Kumar Mishra, Advocate

For Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

27.08.2020

On 21.10.2002 a secret information is said to have been received by Assistant Sub Inspector (PW-4) of Police Station Nagarnar to the effect that the accused/appellant was holding a bag containing Ganja and was waiting for a bus at Gudapara. This information was entered into a Rojnamcha (Ex.P-4), Panchnama to this effect was drawn and copy of the same was forwarded to Superintendent of Police, Jagdalpur under acknowledgment Ex. P-12. Thereafter PW-4 reached the spot, nabbed the accused/appellant holding a bag in his hands, notice under Section 50 of the Narcotic Drugs and Psychotropic Substances Act (for short “NDPS Act”) was given to him apprising of his right to be searched either by a Gazetted Officer or Magistrate. Since the accused/appellant expressed his readiness for his search by PW-4 himself, the proceedings moved ahead. PW-4 and his staff members also gave their search to the accused/appellant under Ex.P-4. Thereafter search was effected under Ex.P-5, contraband contained

in the bag held the accused/appellant was tasted by sniffing, rubbing and burning under Ex.P-6, weighment was carried out, two samples of 30 Grams each of the contraband were taken out to be sent for chemical examination. Thereafter seizure under Ex.P-8 was made and on weighment being done, the contraband came out to be 5 KG. Spot Map (Ex.P-4) was made and thereafter the samples so drawn were sent to the laboratory for being chemically examined under Ex.P-22 and on said examination being done the same was found to be Ganja vide report Ex.P-24. After completing other procedural formalities required to be undertaken under the NDPS Act, the charge-sheet was laid followed by framing of charge against the accused/appellant under Section 20-B (ii) (b) of the NDPS Act.

2. Learned Court below vide judgment impugned dated 03.03.2003 passed in Special Case No.53/2002 held the accused/appellant guilty under Section 20-B (ii) (b) of the NDPS Act and sentenced him to undergo RI for 3 years and 6 months and to pay fine of Rs.12,000/-, plus default stipulation.

3. Counsel for the accused/appellant submits that the finding recorded by the Court below are perverse, erroneous and bad in law and being so they are liable to be set aside. He submits that most of the witnesses examined by the prosecution hail from the Police Department and therefore, their testimony cannot be relied upon implicitly for holding the accused/appellant guilty under the NDPS Act. According to the counsel for the appellant, the prosecution has not examined any witness with respect to seizure and weighment of the contraband separately which renders its case doubtful.

4. State counsel however supports the judgment impugned to be fully justified and submits that the statement of the witnesses cannot be discarded merely for the reason that they happened to belong to the Police Department for the reason that it has not come on record that appellant was having any animosity with these witnesses which could have made them rope him in a false and concocted case.

5. After hearing counsel for the parties and going through the evidence of the witnesses it becomes apparent that on 21.10.2002 acting upon a secret information received by ASI (PW-4), the accused/appellant was nabbed at Village Gudapara while he was waiting for bus and before effecting search and seizure all the mandatory requirements provided under this act have been duly taken care of. Record also shows that the contraband contained in the bag held by the accused/appellant was subjected to all possible procedural formalities such as search, seizure, weighment etc. and the samples so drawn were sent to Forensic Science Laboratory for chemical examination. The report received from the laboratory (Ex.P-24) confirms the contraband to be Ganja, which on weighment came out to be 5 KG. One of the witnesses to seizure has stated that the Ganja seized from possession of the accused/appellant was weighing 20 KG. No procedural irregularities while conducting the case have been pointed out by the prosecution and right from the beginning all precautions were taken care of including sending the information to the superior officer. There appears to be nothing for this Court to disbelieve the evidence of the witnesses merely because they belonged to the police department. Furthermore, no previous ill will or animosity has been pleaded by the accused/appellant to the police people on the basis of which an

inference of false implication could have been drawn at their instance.

6. The conviction of the accused/appellant under Section 20-B (ii) (b) of NDPS Act, therefore, does not suffer from any illegality or infirmity warranting any disturbance or dislodgement by this Court. Being all this, the conviction of the accused/appellant under the said section is hereby approved.

7. As regards sentence, the report received from the Superintendent, Central Jail, Jagdalpur (Bastar) dated 27.11.2014 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 20.01.2007, therefore, no observation regarding the sentence part is required to be made by this Court.

8. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-
(Vimla Singh Kapoor)

Judge