

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1052 of 2004**

1. Kapoorchand Jhariya, aged about 28 years, S/o Late Shri Chamru Jhariya, R/o Vavagaon, P.S. Kawardha, District Kabirdham (C.G.)

---- Appellant**Versus**

1. The State of Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sashi Bhushan Tiwari, Advocate.
For Respondent/State	:	Shri Ayaz Naved, 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 10/12/2004 passed by Special Judge, (N.D.P.S. Act) Kabirdham, Kawardha in Special Case No. 26/2004; whereby the appellant Kapoorchand Jhariya 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 2½ 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 16/01/2004 that the appellant is going towards Charbhata carrying Ganja in his bicycle, PW-07 Sub Inspector Manju Lata Rathore prepared secret information Panchnama and after preparing Panchnama for search without warrant proceeded for the indicated place alongwith the staff and the witnesses. At the said place the appellant was found standing

with a plastic bag. The appellant was informed about his legal rights of being searched by Gazetted Officer or Magistrate or the Police vide Ex. P-3. After consent being given by the appellant vide Ex. P-5, his personal search was made vide Ex. P-6 and Ganja was seized from the plastic bag carried by the appellant vide Ex. P-7 and on being examined by smelling and burning, it was found to be Ganja vide Ex. P-8. On weightment being done, the Ganja was found 5.200 Kg out of which 2 samples of 25 grams each were drawn and sealed. Panchnama of sample seal is Ex. P-11 and the seizure memo is Ex. P-12 which bears specimen of seal. FIR vide Ex. P-16 was registered and appellant was arrested. Seized article were deposited in Malkhana and acknowledgement was received vide Ex. P-22C. The samples were sent for chemical examination through Superintendent of Police Kabirdham vide Ex. P-20. As per FSL report the sample was found to be Ganja vide Ex. P-24. After recording the statements of the witnesses and completing the formalities of the investigation, charge sheet under section 8/20 of the NDPS Act 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 04 witnesses namely PW-01 Milan Singh Gond, PW-02 Manharan Lal, PW-03 Ravi Pandey, PW-04 Jamelal, PW-05 Sadhram (Kotwari), PW-06 Sevti Bai, PW-07 Manjulata Rathore (I.O.), PW-08 Sharab Singh Pahuja, PW-09 R.D. Sonwani (Inspector), PW-10 Prakash Chandra Dewangan (Constable), PW-11 Ramfer Jaiswal (Sub Inspector), PW-12 Laxman Khunte (Head Constable) and PW-13 Birbal Verma (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. DW-01 Dhanna 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 and 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, appeal may be allowed.
- 8) Alternatively, he submits that if this Court finally comes to the conclusion that the appellant is guilty for the offence under section 20(b)(1) of the NDPS Act, considering the fact that incident took place 16 years above, the appellant was young offender of 28 years at the relevant time and has no criminal antecedents, he has already remained in jail for about 3 months (approx.) 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-24 the articles sent for chemical analysis were found to be Ganja.
- 12) As per evidence of PW-07 Manjulata Rathore (I.O.) on 16/01/2004 upon receiving secret information that the appellant is carrying Ganja in his bicycle and going Charbhata, he recorded the said secret information and after preparing Panchnama for search without warrant proceeded for the indicated place alongwith staff and the witnesses. Information about the same was forwarded to Dy. S.P. Kawardha vide Ex. P-23. At the indicated place the accused appellant was found standing with a plastic bag. The appellant was given notice vide Ex. P-3 regarding his search and upon receiving his consent for search by the Police vide Ex. P-4 & Ex. P-5 his search was made and Ganja was seized from the plastic bag which the appellant was holding vide Ex. P-7. On weighment being done vide Ex. P-9 & Ex. P-10, the Ganja was found 5.200 Kg out of which 2 samples of 25 grams each were drawn and the sample as well as the remaining Ganja were duly sealed. Dehati Nalsi was prepared on the spot vide Ex. P-15. FIR vide Ex. P-16 was registered and appellant was arrested. The seized article were deposited in the Malkhana. Spot map Ex. P-2 was prepared and statements of the witnesses were recorded. The samples were sent to FSL for chemical examination vide Ex. P-20 and as per FSL report the samples were found to be Ganja.
- 13) From the evidence of PW-07 Manjulata Rathore (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.
- 14) PW-01 Milan Singh Gond, Panch of the village, has stated that he alongwith other villagers informed the Police about illicit

Ganja being carried by the appellant on which the Police came and arrested the appellant

- 15) PW-02 Manharan Lal has also proved this fact that Ganja was seized from the accused.
- 16) PW-03 Ravi Pandey, Patwari prepared spot map vide Ex. P-1 proved the same.
- 17) PW-04 Jamelal and PW-05 Sadhram (Kotwari) both independent witnesses turned hostile but they admit their signature on all the relevant documents vide Ex. P-2 to Ex. P-12 and have partly supported the prosecution case. PW-06 Sevti Bai not supported the prosecution case.
- 18) PW-11 Ramfer Jaiswal, Sub Inspector has proved the FIR Ex. P-16 which was registered on the basis of Dehati Nalisi Ex. P-15 recorded by PW-07 Manjulata Rathore. The said evidence remained uncontroverted in the cross examination.
- 19) PW-12 Laxman Khunte, Head Constable also proved deposit of the sealed samples in the Malkhana vide Ex. P-22C.
- 20) PW-13 Birbal Verma, Constable working in the office of Dy. S.P. as Reader has stated that he received a closed envelop containing information regarding Section 42 of the NDPS Act and Panchnama regarding search without warrant which was given to the Dy. S.P. vide Ex, P-23. The said evidence has not been challenged in the cross examination.
- 21) DW-01 Dhanna has only stated that due to political rivalry with the Gaukaran, PW-02 Manharan Lal and PW-01 Milan Singh Gond appellant was falsely implicated in this case but there is no reason to disbelieve the statement of DW-01 Dhanna.
- 22) Looking to the entire statement of PW-07 Manjulata Rathore (I.O.), PW-10 Prakash Chandra Dewangan (Constable), PW-11 Ramfer Jaiswal (Sub Inspector), PW-12 Laxman Khunte (Head Constable) and PW-13 Birbal Verma (Constable) and PW-01

Milan Singh Gond it's proved that upon receipt of secret information by PW-07 Manjulata Rathore when she alongwith witnesses and the Police staff reached the indicated place the appellant was found there with a plastic bag in his bicycle. Upon search of the said bag carried by the appellant Ganja like substance was recovered from him which was weighing 5.200 Kg. Upon chemical examination of the contraband it was found to be Ganja.

- 23) 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.
- 24) 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.”

- 25) 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 of record this Court find no illegality or infirmity in the findings recorded by the Trial Court. Though the independent witnesses PW-04 Jamelal, PW-05 Sadhram (Kotwari) have not fully supported the prosecution case but they admitted their signatures on the relevant documents. PW-01 Milan Sing Gond, PW-02 Manharan Lal, PW-07 Manjulata Rathore (I.O.), PW-10 Prakash Chandra Dewangan (Constable), PW-11 Ramfer Jaiswal (Sub Inspector), PW-12 Laxman Khunte (Head Constable) and PW-13 Birbal Verma (Constable) have fully supported the prosecution case and have duly proved the secret information, preparation of Panchnama, search warrant, search of appellant, seizure of Ganja from him, its weighment, sampling, arrest and forwarding of relevant information to the superior authorities etc. The defence has not adduced any evidence which could suggest that the Investigating Officer or any Police personnel in all the above witnesses were 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.

- 26) As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place around 16 years back, the age of the appellant at the relevant time is 28 years and at present he must be 44 years, the appellant is young offender having no criminal antecedents, quantity of Ganja i.e. 5 Kg 200 Gram, the fact that the appellant has remained in jail for 3 months (approx.), *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.
- 27) 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