

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 685 of 2002**

1. Anil Kumar Talukdar S/o Late Chunnilal Talukdar, aged 50 years, Occupation – Farmer, R/o P.V.-61 P.S. Pakhanjur, District Kanker (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Pakhanjur, District Kanker (C.G.)

---- Respondent

For Appellant	:	Shri Gurudev I. Sharan, Advocate.
For Respondent/State	:	Shri Ashish Gupta, P.L.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****06/02/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 07/01/2002 passed by Special Judge, (N.D.P.S. Act) Bastar, at Jagdalpur in Special Case No. 32/2000; whereby the appellant Anil Kumar Talukdar 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 1 year and 6 months & fine of Rs. 2,000/- in default of fine additional R.I. for 4 months.

- 2) None appeared on behalf of the appellant for arguing this appeal despite repeated calls. In the given facts and circumstances of the case, in particular the long pendency of the appeal, this Court feels it appropriate to appoint a counsel in this case from the High Court Legal Services Committee for arguing the appeal on behalf of the appellant.

- 3) Shri Gurudev I. Sharan, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court appoints Shri Gurudev I. Sharan, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.

- 4) Case of the prosecution in brief is that on 23/05/2000 Assistant Sub Inspector Chetansingh Sahu of Police Station Pakhanjur, District Kanker received a secret information that accused kept Ganja at his home for selling. After recording the said information in the Rojnamchasanha, Panchnama Ex. P-2 was prepared in presence of witnesses and thereafter he proceeded for search of the appellant. He also noted down reason as to why he had not obtained warrant from the appropriate authority vide Ex. P-3. On this Chetan Singh Sahu, Assistant Sub Inspector alongwith Police staff & witnesses went to house of appellant at village P.V. 61, P.S. Pakhanjur after recording the departure in the Rojnamchasanha to the effect. Notice (Ex. P-4) under Section 50 of the NDPS Act was given to the accused before search of his house that he may get the search through Gazetted Officer or the Magistrate or by him (Chetansingh Sahu A.S.I.). The accused consented for search by the Police vide Ex. P-4. Thereafter, Chetansingh Sahu (A.S.I.), gave search of himself and the Police Staff to the accused by Ex. P-5 & Ex. P-9. After search of the house of the accused, 4 KG Ganja was recovered in white plastic bag of fertilizer inside Bamboo Dolgi (Bucket). Identification Memo of the Ganja was prepared vide Ex. P-6. Out of the said Ganja 2 samples of 24 grams were drawn and sealed. The seized Contraband was deposited in Malkhana by Chetan Singh Sahu (A.S.I.) and acknowledgement was obtained vide Ex. P-11. Spot map was prepared as per Ex. P-17. The accused was arrested vide Ex. P-18, FIR Ex. P-12 was registered under Crime No. 69/2000 and the information regarding the entire proceedings was forwarded to the Special Court, Jagdalpur, S.P., Kanker, A.S.P., Kanker and S.D.O.P.

Bhanupratappur, the samples of articles were sent for Chemical Examination to FSL Raipur vide Ex. P-4 from where report Ex. P-16 was received confirming the Contraband to be Ganja. After completion of investigation charge sheet was filed against the accused/appellant under Section 20(b) of NDPS, Act.

- 5) The Trial Court framed charge against the accused/appellant under Section 20(b) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 6) The prosecution in support of its case examined as many as 05 witnesses namely PW-01 Abhilal, PW-02 Shivnath, PW-03 Chetansingh Sahu (A.S.I.), PW-04 Dhaniram Nag (Patwari) and PW-05 U.R. Diwan (S.I.). 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 witness was examined by the accused in his defence.
- 7) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 8) Learned counsel for the appellant submits that there is total non-compliance of mandatory provisions of Sections 42 & 50 of NDPS Act. There is no independent witness who supported the prosecution case. Looking to the fact that appellant was being treated in Bhanupratappur on the time of incident, it is clear that he has been falsely implicated in this case by Police. The prosecution has failed to prove offence against the appellant, therefore, appeal may be allowed. Only on the basis of evidence of the Investigating Officer who was interested in the case, conviction of the accused cannot be sustained.
- 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-16 the articles sent for chemical analysis were found to be Ganja.
- 12) It is also not disputed by the respondent/State counsel that PW-01 Abhilal and PW-02 Shivnath both independent witnesses have turned hostile and not supported the prosecution at any stage of examination but both have admitted their signature on document Ex. P-1 to Ex. P-9 prepared by the Investigating Officer.
- 13) The conviction is based on the evidence of PW-03 Chetansingh Sahu (I.O.), PW-04 Dhaniram Nag (Patwari) and PW-05 U.R. Diwan (S.I.).
- 14) As per PW-03 Chetansingh Sahu (I.O.) when he received secret information from informer that accused kept Ganja at his home for selling as per Ex. P-2, he recorded the same in the Rojnamchasanha and thereafter he went for search of appellant alongwith his staff and 2 independent witnesses. Thereafter, immediately he reached along with his staff and witnesses to house of appellant and as per Ex. P-4 notice was given to the accused for search and after obtaining consent of accused Anil Kumar Talukdar search of his home was made vide Ex. P-6 and 4 KG Ganja was recovered as per Ex. P-7. As per Ex. P-5 search memo is prepared, therefore, the seized article was brought to Police Station and as per Ex. P-8 at Police Station in

presence of the accused and independent witnesses, Ganja was weighed and found to be 4 KG out of which 2 samples were drawn and marked as Articles A1 and A2. As per Ex. P-9 the article was sealed and specimen seal Panchnama was prepared.

- 15) As per Ex. P-8 the seizure memo is prepared and the accused was arrested as per Ex. P-18. The article was sent for keeping in safe custody by Police as per Malkhana Register Ex. P-11. FIR was lodged as per Ex. P-12 and article was sent for FSL examination vide Ex. P-14. As per Ex. P-16 FSL report the article so sent was found Ganja. Looking to the fact that search made in the house of the accused/appellant, compliance of Section 50 of NDPS Act is not required. Proviso of Section 50 is not applicable in the case where the search is made in the house of accused, it is not a personal or individual search, therefore, compliance of Section 50 was not applicable in this case. Though in the case notice under Section 50 was also given by the I.O as per Ex. P-1 to the accused Anil Kumar Talukdar and after consent as per Ex. P-4 the search was made in the house of the accused person.
- 16) Definitely the independent witnesses of village have turned hostile and not supported the prosecution case but they admitted their signature on document Ex. P-1 to Ex. P-9. Looking to the evidence of PW-03 Chetansingh Sahu (I.O.) there is no reason to disbelieve this Investigating Officer. The defence counsel has not brought on record anything to show that the Investigating Officer was having any ill will or enmity with the accused/appellant for his false implication in this case. During cross-examination of the witnesses also no such suggestion has been put to them that the Investigating Officer was inimical to the accused/appellant.
- 17) 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.

- 18) 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.”

- 19) The Trial Court has discussed in detail about the compliance of the mandatory provisions by the Investigating Officer from Paras 12 to 24 of the impugned judgment. Thus considering the oral and documentary evidence on record the seizure of Contraband Ganja from the possession of the accused /appellant which was subsequently found to be Ganja as per FSL report vide Ex. P-16, this Court is of the opinion that the Trial Court was fully justified in convicting the appellant under Section 20(b)(1) of NDPS Act. Therefore, no substance in this appeal. The appellant has already completed his jail sentence i.e R.I. for 1 year and 6 months and released from jail on 14/06/2003 as per Jail Report.
- 20) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per report dated 06/02/2020 submitted by Jail Superintendent, Central Jail, Jagdalpur, the appellant having completed the jail sentence has been released from jail on 14/06/2003. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant