

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 204 of 2007**

- Gainchandani Yadav (as per impugned judgment Gyanchand), S/o Dhaneswar Yadav, Aged about 21 years, Occupation Agriculture, R/o Village – Tiklipara, Thana – Farsabahal, Distt. - Jashpur (C.G.).

----Appellant**Versus**

- State of Chhattisgarh, through Station House Officer, P.S. - Farsabahal, Distt. - Jashpur (C.G.)

---- Respondent

For Appellant	: Mr. Sanjay Agrawal & Ms. Monika Singh, Advocate.
For Respondent/State	: Mr. K.K. Singh, Govt. Advocate

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****21.07.2020**

1. Proceedings of the matter have been taken up through video conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 16.01.2007 passed by the Special Judge (N.D.P.S. Act), Jashpur in Special Criminal Case No.01/2006, convicting the accused/appellant for the offence punishable under Section 20(b) read with Section 20(ii)(B) of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for three years with fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for nine months.

3. As per prosecution case on 16.08.2006 at about 10.00 am Sub Inspector - B.N. Tiwari (PW-5) received secret information from informant that at village Tiklipara, one person namely Gyanchandan was carrying contraband (*Ganja*) for the purpose of selling unauthorizedly and without authority of law. The said information was reduced into writing as Ex. P/1 and Rojnamchasanha vide Ex.P/10-C was prepared and forwarded to the Sub Divisional Officer (Police) vide Ex.P-17. The police party went to the spot and in absence of search warrant, they prepared a legal Format indicating that the search warrant has not been obtained by them vide Ex.P-2 and, thereafter, gave notice (Ex.P-4) to the appellant under Section 50 of the NDPS Act in presence of witnesses namely- Badriprasad Yadav & one Taneshwar Chauhan 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-3 and nothing was found. Upon search being made, ganja like substance was recovered from the house of the accused and on being examined by smelling and burning, it was found to be Ganja vide Ex.P-6. On weighment being done of the contraband it was found to be 3 kgs & 500 gms vide Ex.P-5. One sample of 500 gms was

drawn from the said contraband and seizure memo (Ex.P-7) was prepared, the sample was duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot Map (Ex. P/8) was prepared by Investigating Officer (PW-5) and another spot map (Ex.P-9) was also prepared by Patwari vide Ex. P/9. Dehati Nalisi (Ex. P/19) was prepared. After returning from the place of occurrence, FIR (Ex.P/20) was registered by Shri B.N. Tiwari, Investigating Officer (PW-5) and information to this effect was sent to the Sub Divisional Officer (Police), Pathhalgaon vide Ex. P/21. Accused/appellant was arrested vide Ex.P-22. The seized contraband was deposited in Malkhana, sample was sent to FSL for chemical examination, which was received by FSL on 8.12.2006 with intact seal and report of FSL is Ex.P-23, which confirms the seized contraband to the Ganja.

4. After usual investigation, charge sheet was filed against the accused/appellant under Sections 8, 20 (b) & (c) and 22 of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charges against the accused/appellant under Section 20(b) read with Section 20(2)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused denied the charges levelled against him and prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined 5 witnesses namely- Badriprasad Aapat (PW-1), Keshav Narayan Bharti (PW-2), Manbodh Sai (PW-3), Josik Ram Kurre (PW P-4) & B.N. Tiwari (PW P-5). 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. However, one defence witness namely Jagdish Das (DW01) has been examined on behalf of the appellant.

6. 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 2 of this judgment.

7. Learned counsel for the appellant/accused submits that statutory compliance as required under Sections 41, 42 & 50 of the NDPS Act has not been made while making seizure of the alleged *Ganja*. He also submits that no independent witness has supported the prosecution case. Alternatively he submits that appellant was 21 years of age at the time of incident and now he is above 34 years and looking to the fact that incident occurred on 16.08.2006, near about 14 years lapsed and he has remained in jail for about one year, it is prayed that the appellant may be sentenced to the period already undergone by him.

8. Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions of Sections 41, 42 & 50 of the NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged *Ganja*, such as notice under Section 50 of the NDPS Act was duly 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 as aforementioned, which does not call for any interference in the instant appeal.

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

10. B.N. Tiwari (PW-5) - Sub -Inspector has stated in his evidence that he received secret information from informant that at village Tiklipara, one person namely Gyanchandan was having contraband (*Ganja*) in his house for the purpose of selling without authority of law. He further stated that the said information was reduced into writing as Ex. P/1 and Rojnamchasanha vide Ex.P/10-C was prepared and forwarded the same to the Sub Divisional Officer (Police) vide Ex.P-17. Thereafter, he alongwith the police party went to the spot and in absence of search warrant, prepared a legal Format indicating that the search warrant has not been obtained by them vide Ex.P-2 and, thereafter, gave notice (Ex.P-4) to the appellant under Section 50 of the NDPS Act in presence of witnesses namely- Badriprasad Yadav & one Taneshwar Chauhan and made him aware of his legal rights, on which he consented to be searched by the police. He also stated that the personal search of the police party and the witnesses were also made by the appellant vide Ex.P-3 and nothing was found. Upon search being made, *Ganja* like substance was

recovered from the house of the accused and on being examined by smelling and burning it was found to be Ganja vide Ex.P-6. On weighment being done of the contraband it was found 3 kgs & 500 gms vide Ex.P-5. One sample of 500 grams was drawn from the said contraband and seizure memo (Ex.P-7) was prepared, the sample was duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot Map (Ex. P/8) was prepared by Investigating Officer (PW-5) and another spot map (Ex.P-9) was also prepared by Patwari vide Ex. P/9. Dehati Nalisi (Ex. P/19) was prepared. After returning from the place of occurrence, FIR (Ex.P/20) was registered by him and information to that effect was sent to the Sub Divisional Officer (Police), Pathhalgaon vide Ex. P/21. Accused/appellant was arrested vide Ex.P-22. The remaining contraband was deposited in Malkhana, sample was sent to FSL for chemical examination, which was received by FSL on 8.12.2006 with intact seal and report of FSL is Ex.P-23, which confirms the seized contraband to be Ganja. Thus, it appears from the statement of Investigating Officer that the statutory provisions as required under 50 of the NDPS Act has duly been complied with while making search and seizure of alleged Ganja and there is no reason to disbelieve the statement of Investigating Officer.

11. Badri Prasad Aapat (PW01), who is the independent witness, has supported the case of the prosecution by stating that after receiving secret information from the informant, police party

went to the spot and the alleged *Ganja* was seized from the possession of the appellant. He further stated that the seizure memo was prepared and by smelling & burning, it was found to be the *Ganja*, thereafter, weighing Panchanama was prepared by the Police in his presence and also proved his signature on all the relevant documents such as Exs. P/1 to P/8.

12. Keshav Narayan Bharti (PW02) has stated in his evidence that in his presence Rojnamchasanha was prepared vide Exs. P/10-C & P/11-C and information to this effect was sent to the Sub Divisional Officer (Police), Pathhalgaon vide Ex. P/12-C.

13. Manbodh Sai (PW-3) has supported the case of the prosecution by stating that he prepared the spot map (Ex.P-8)

14. Josik Ram Kurre (PW-4) has stated in his evidenced that in his presence the alleged *Ganja* was seized by Shri B.N. Tiwari, Investigating Officer. Thus, there is no reason whatsoever to disbelieve the statement of this witness.

15. From careful perusal of the evidence of aforesaid witnesses, it is apparent that there is no reason to disbelieve the statements of the prosecution witnesses such as Investigating Officer - B.N. Tiwari (PW-5), Badri Prasad Aapat (PW-1), Keshav Narayan Bharti (PW-2) & Manbodh Sai (PW-3). From the oral and documentary evidence, it is evident that compliance of the statutory provisions under Sections 41, 42 and 50 the NDPS Act has been duly complied with while making search and seizure of the *Ganja*. The defence has failed to elicit anything from the prosecution

witnesses which could suggest that witnesses had any interest or enmity with the accused/appellant for his false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record. In these circumstances, there is no reason to suspect the credibility of these witnesses.

16. 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) read with Section 20(ii)(B) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

17. So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2006, the appellant is facing trial since 2006, at the time of incident he was young boy, 21 years of age and at present must be of 34 years and the fact that the appellant has already remained in jail for about one year 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 as imposed by the trial Court intact.

18. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 20(b) read with Section 20(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 sentence of fine of Rs.5,000/- with default stipulation as imposed by the trial Court shall remain intact.

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