

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 683 of 2011**

- Garibo Yadav S/o Bharjan Yadav, aged about 27 years, R/o- Neempara, Devbhog, District- Raipur (C.G.).

----Appellant**Versus**

- State of Chhattisgarh through the District Magistrate, Raipur, District- Raipur (C.G.).

---- Respondent

For Appellant : Shri Sivendue Pandya, Advocate.

For Respondent/State : Shri B. P. Banjare, Dy. Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****06.11.2020**

(1) The matter is heard through Video Conferencing.

(2) This appeal arises out of the judgment of conviction and order of sentence dated 27.08.2011, passed by the Special Judge (N.D.P.S. Act), Raipur in Special Criminal Case No. 19/2010, convicting the accused/appellant for the offence punishable under Section 20(b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "NDPS Act") and sentencing him to undergo rigorous imprisonment for two years with fine of

Rs. 15,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

(3) As per prosecution case, on 20.05.2010, at about 09.15 hours Lambodar Patel (PW-5), Station House Officer, Gariyaband Police Station received information from informant that at village Gariyaband, Bus stand appellant – Garibo Yadav was having *ganja* in his possession in a bag. The said information was reduced into writing vide Ex.P-2 and thereafter without obtaining search warrant, *Panchnama* was prepared vide Ex.P-3. Thereafter, the police party went to the spot, apprehended the accused, in presence of witnesses namely Narottam & Jagat gave him notice (Ex.P-11) under Section 50 of the NDPS Act 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-4, and nothing was found. On search of the bag, which the appellant was carrying, Ganja like substance was recovered vide Ex. P/5 and on being examined by smelling, it was found to be Ganja vide Ex.P-6. On weighment being done of the contraband it was found to be 5.500 kgs vide Ex. P/8. Two samples, each of 100 gms, were drawn from the said contraband and seizure memo (Ex.P-9) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-19 and the accused was arrested. Intimation of the entire proceedings was forwarded to the office of Superior

Authority vide Ex.P-13 & 14. After reaching police station, FIR (Ex-P-15) was registered against the appellant under Section 20(b) of the NDPS Act. The seized contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 22.05.2010 with intact seal and as per the report of FSL, Raipur, the seized contraband was confirmed to be the Ganja vide Ex.P-19.

(4) After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charges against the accused/appellant under Sections 20 (b)(ii)(B) of the NDPS Act. Accused denied the charges levelled against him and prayed for trial.

(5) So as to hold the accused/appellant guilty, the prosecution examined 08 witnesses namely- Bihari Singh Thakur (PW-1), Narottam Giri Goshwami (PW-2), Rajesh Dewangan (PW-3) Jamunalal Uike (PW-4), Lambodar Patel (PW05), Khem Singh Thakur (PW06), Dashrath Manjhi (PW07) and Manohar Das Vaishnav (PW08). 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. No defence witness has been examined on behalf of the accused person.

(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 the appellant has been falsely implicated in the crime in question as there is no evidence on record to connect the appellant with the crime in question. He submits that in this case independent witnesses have not supported the case of the prosecution and conviction cannot rest only on the basis of statements of official witnesses i.e. Bihari Singh Thakur (PW-1), Jamunalal Uike (PW-4), Lambodar Patel (PW-5), Khemsingh Thakur (PW-6) & Manohar Das Vaishnav (PW-8). He further submits that statutory compliance as required under the NDPS Act has not been complied with while making search & seizure of the alleged *Ganja* and only on the basis of evidence of the interested witnesses, trial Court has erred in convicting and sentencing the accused/appellant for the aforesaid offence. Alternatively, learned counsel appearing for the accused/appellant submits that incident had occurred in the year 2010, near about 10 years were elapsed, the appellant was 27 years at the time of incident and now he is about 37 years and has no criminal antecedents, it is prayed that the appellant may be sentenced to the period already undergone by him as the appellant has already remained in jail for about 1 year 4 months and 6 days.

(8) Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions 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 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, which does not call for any interference in the instant appeal.

(9) I have heard learned counsel appearing for the parties and perused the record of the trial Court including impugned judgment.

(10) Lambodar Patel (PW-5), Station House Officer, Gariyaband Police Station has proved this fact that he received a secret information from an informant that at village Gariyaband, Bus stand appellant – Garibo Yadav was having *ganja* in his possession in a bag unauthorisedly for the purpose of selling. The said information was reduced into writing vide Ex.P-2 and thereafter without obtaining search warrant, *Panchnama* was prepared vide Ex.P-3. Thereafter, he alongwith the police party went to the spot, apprehended the accused, in presence of witnesses namely Narottam & Jagat gave him notice (Ex.P-11) under Section 50 of the NDPS Act 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-4, and nothing was found. On search of the bag, which the appellant was carrying, Ganja like

substance was recovered and on being examined by smelling, it was found to be Ganja vide Ex.P-5 & 6. On weighment being done of the contraband it was found to be 5.500 kgs vide Ex. P/8. Two samples, each of 100 gms, were drawn from the said contraband and seizure memo (Ex.P-9) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-19, the accused was arrested. Intimation of the entire proceedings was forwarded to the office of Superior Authority vide Ex.P-13 & 14. After reaching police station, FIR (Ex-P-15) was registered against the appellant under Section 20(b) of the NDPS Act. The seized contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 22.05.2010 with intact seal and as per the report of FSL, Raipur, the seized contraband was confirmed to be the Ganja vide Ex.P-19. There is no reason to disbelieve / discard the evidence of this witness as he has remained firm during his cross-examination.

(11) Lambodar Patel (PW-5) on material particulars, has stated that Ganja was seized from the bag of the appellant and he was arrested and thereafter weighment panchanama was prepared. Thus, there is no reason to disbelieve the statement of the said witness.

(12) Jamuna Lal Uike (PW-4) who was posted in the office of S. D. O. (P.) Gariyaband has stated in his evidence that on 25.05.2010 he received and signed the documents i.e. intimation

of the entire proceedings forwarded to the office of Superior Authority (Ex.P-13 & 14).

(13) Narottam Giri Goswami (PW-2) & Rajesh Dewangarn (PW-3) are the independent witnesses in this case and they turned hostile but admitted to have signed all the relevant documents such as Exs. No. P/2 to P/11 and that the said documents were prepared in their presence.

(14) Manohar Das Vaishnav (PW-8), Head Constable, has stated in his deposition that on 22.05.2010 he submitted two sealed packets of Articles A-1 & A-2 to the FSL, Raipur.

(15) Khemsingh Thakur (PW-6), Constable No. 1666, stated in his deposition that he submitted the information, received from the informant about the incident to the office of S.D.O. (P), Gariaband vide P-14.

(16) Looking to the statements of prosecution witnesses, who are the Police Official namely Lambodar Patel (PW-5), Jamuna Lal Uike (PW-4), Manohar Das Vaishnav (PW-8) & Khemsingh Thakur (PW-6) in particular, the statement of investigating Officer-Lambodar Patel (PW05), Station House Officer, Gariyaband Police Station it is apparent that the procedure prescribed under the NDPS Act had duly been followed by the Investigating Officer while making search and seizure of the contraband *Ganja* and there is no reason to disbelieve the statements of Investigating Officer and other police officials.

(17) It cannot be stated as a rule of law that a police officer can

or cannot be a reliable 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.

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 trust worthy, 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. [Pramod Kumar V. State (GNCT) of Delhi reported in **AIR 2013 Supreme Court 3344**]. The same principle of law has been reiterated by the Supreme Court Judgment 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 scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

(18) In the recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of **Rajesh Dhiman Vs. State of Himachal Pradesh** in (CRA No. 1032 of 2013) and **Gulshan Rana Vs. State of Himachal Pradesh** in (CRA No. 1126 of 2019), where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would not *ipso facto* be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.

(19) In the present case, though the independent witnesses namely Narottam Giri Goswami (PW-2) & Rajesh Dewangarn (PW-3) have not fully supported the prosecution case but they have admitted their signatures on the documents such as Exs. P/2 to

P/11. The police personnel, have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

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

(21) So far as the sentence of the appellant under Section 20 (b) (ii)(B) of the NDPS Act is concerned, considering the fact that the appellant is first offender and has no criminal antecedents and at the time of incident he was 27 years of age. The incident occurred way back in the year 2010, the appellant is facing trial since 2010 and as per PUD received from Central Jail Raipur, the appellant has already remained in jail for 1 year, 4 months and 6 days 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 imposed by the trial Court intact.

(22) Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20 (b)(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 fine sentence with default stipulation as imposed by the trial Court shall remain as it is.

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

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