

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10.01.2020

Delivered on 12.02.2020

Criminal Appeal No.946 of 2015

- Ajay Bari S/o Late Dhiraj Bari Aged About 27 Years R/o Joda Talab Sheetla Ward, Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District Surguja Chhattisgarh.

---Respondent

For the appellant : Shri Manoj Mishra, Advocate
 For the respondent/State : Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. Shri Rahul K Mishra, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for hearing, therefore, Shri Manoj Mishra, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.

2. The appeal is directed against judgment dated 25.6.2015 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act 1985'), Ambikapur, Distt. Surguja (Chhattisgarh) in Special Criminal Case No. 24/2012 wherein the said Court convicted the appellant for commission of offence under Section 20(b) of the Act, 1985 and

sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- with default stipulations.

3. As per the version of the prosecution, on 08.9.2012, Sub Inspector RK Nishad, Police Station Ambikapur received an information that the appellant is doing the business of brown sugar, he went to village Gadwa for purchasing Brown Sugar and was returning on 08.9.2012 in Popular bus. On the basis of the information, Sub Inspector RK Nishad along with Police personnel reached to the spot and recovered 12.690 gm Brown Sugar from the appellant. After due compliance of the legal provisions and investigation, the appellant was charge sheeted. After completion of the trial, he was convicted as mentioned above.

4. Learned counsel for the appellant submits as under:

(i) The appellant was not given any option as to whether he desires to be searched in the presence of Gazetted Officer or Magistrate as envisaged under Section 50 of the Act, 1985, therefore, the same vitiates his conviction.

(ii) Independent witnesses namely Ramesh Kumar Soni (PW-1) and Pradeep Kumar Soni (PW-3) have not supported the case of the prosecution.

(iii) The Investigating officer was not having any search warrant and there was material contradictions and omissions in the statement of the investigating officer, therefore, conviction of the appellant is not sustainable in the eye of the law.

(iv) The trial Court has not evaluated the evidence properly, therefore, conviction recorded by the trial Court is not sustainable.

5. On the other hand, learned counsel for the State while supporting the impugned judgment would submit that all the provisions of the Act are duly complied with and seized article was kept in safe custody in Malkhana and sample of the article was deposited at Forensic Science Laboratory and as per the report of the laboratory (Ex-P/25) the article is found as diacetylmorphine, therefore, finding of the trial Court is just and proper which invokes no interference.

6. I have heard learned counsel for the parties and perused the judgment impugned.

7. Now the question for consideration before this Court is whether the appellant was in possession of diacetylmorphine on the date of incident. As per the version of Sub Inspector RK Nishad (PW-8), he received information that the appellant is engaged in selling diacetylmorphine (Brown Sugar), he had gone to village Gadwa for purchasing the same and returning on 08.9.2012 in Popular bus. As per the version of this witness, he recorded the information as per Ex-P/13 and the information was sent to City Superintendent of Police Ambikapur and received acknowledgment as per Ex-P/14. As per the version of this witness, he called two independent witnesses namely Anil Soni and Fahamuddin Ansari by giving notice Ex-P/1 and P/16 and thereafter he rushed to the spot i.e. Ramanujganj Road with police

personnel and independent witnesses. There he was waiting for Popular Bus and when it reached at about 1.00 pm, he asked to stop the bus and enquired with the appellant, he gave him notice that he can be searched by the Magistrate or City Superintendent of Police. After receiving the notice under Section 50 of the Act, 1985, the appellant gave consent to be searched by this officer. The appellant conducted search of the witnesses but no objectionable article was found in their possession and such search was recorded as Ex-P/2. As per the version of this witness, the appellant searched all the members of the Police staff as per Ex-P/3 and this witness also been searched by the appellant. As per the version of this witness, when right pocket of the full pant of the appellant was searched, two polythene packets were found in which some article like Brown Sugar was found which was deep brown in colour. He tested the seized article and found it to be Brown Sugar. Identification of the article was recorded as per Ex-P/5 thereafter he mixed the seized article properly and prepared documents regarding mixture as per Ex-P/6. The articles were weighed wherein one packet was found to be 5.610 gm and another packet was found to be 7.080 gm. In the first packet weight of the polythene was 590 mgm and the weight of the polythene in second packet was 300 mgm. The Brown Sugar was found to be 12.690 gm which was sealed and specimen seal of the Police Station Ambikapur was affixed. Seizure memo was prepared as per Ex-P/9. Seized articles were deposited in the Malkhana at Police Station Ambikapur and

handed over to Head Constable Sanjay Gupta who was the Incharge of Malkhana. As per the version of this witness, information regarding search and seizure was sent to the City Superintend of Police Ambikapur as per Ex-P/15 and seized articles was sent through Constable Rahul Sharma to State Forensic Science Laboratory for examination as per Ex-P/18 and report was received as per Ex-P/25 in which test of diacetylmorphine was found positive.

8. Version of this witness is supported by version of Head Constable Sanjay Gupta (PW-9) who deposited the seized article for safe custody in Malkhana and recorded the same in the Register which is Ex-P/31. As per the version of this witness, the seized articles were sent through Constable Rahul Sharma as per Ex-P/2 to P/7 on 10.9.2012. The prosecution witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. Therefore, there is nothing on record to say that the appellant has been falsely roped in the charge in question. There is nothing on record to say that he has been implicated on account of grudge or otherwise, therefore, it is established from the evidence that diacetylmorphine was in possession of the appellant as mentioned above.

9. The second point for consideration before this Court is whether the provisions of the Act, 1985 has been complied with. As per the version of Dhiraj Gupta (PW-7), he received information in the office and the same was transmitted to the Office of Superintend of Police Ambikaspur which was given to

him by Sub-Inspector RK Nishad. This information was given regarding proceedings for search without warrant. From the statement of this witness, it is established that all the provisions of Section 42(2) of the Act, 1985 has been complied with. From the evidence of Sub-Inspector RK Nishad (PW-8) it is established that the appellant was provided information regarding his right to be searched by Magistrate or available Gazetted Officer. Therefore, provisions of Section 50 of the Act, 1985 is also complied with in the present case. As per the version of Sub-Inspector RK Nishad (PW-8), seized articles were deposited in the safe custody of Malkhana which is in compliance of Section 50 of the Act, 1985. Information regarding search and seizure was sent to the higher authority as per the evidence of Sub-Inspector RK Nishad which is the compliance of Section 57 of the Act, 1985.

10. Taking into consideration the totality of the evidence, there is nothing on record that the appellant has been roped in false charges. There is nothing on record to say that he has been roped on account of grudge or otherwise. Statement of the witnesses inspire confidence, therefore, it is proved that the appellant was in possession of Brown Sugar as mentioned above.

11. The quantity of Brown Sugar seized is neither small quantity nor commercial quantity. Therefore, act of the appellant falls within mischief under Section 20(b) of the Act, 1985. Considering the entire evidence on record arguments advanced on behalf of the appellant is not sustainable and conviction of the appellant for

the said offence is hereby affirmed. The trial Court awarded sentence of 10 years which cannot be termed as harsh, disproportionate or unreasonable because as per the intention of the Legislature stringent punishment has to be awarded in the cases of Narcotic Drugs and Psychotropic Substances, therefore, sentence part is also not liable to be interfered with.

12. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE