

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1054 of 2003

- D.Krishna Rao, S/o D. Jagmaiya, aged 48 years, R/o Subhash Market, Khursipar, Bhilai, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	:	Shri AK Gupta, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

02/01/2020

In this appeal filed under Section 374(2) of CrPC, the appellant challenges the legality, validity and propriety of the judgment of conviction and order of sentence dated 26.4.2003 passed by Special Judge & Additional Sessions Judge, Durg in NDPS Case No.12/2000 whereby the appellant stands convicted under Section 20(b)(i) of Narcotic Drugs and Psychotropic Substances Act for violation of Section 8(c) of the Act and sentenced to undergo RI for five months and pay a fine of Rs.500/- in default whereof to suffer additional SI for two months.

02. Facts of the case in brief are that on receipt of information through wireless by PW-3 TR Kanwar, Sub Inspector, P.S. Chhawani, that a person is selling contraband Ganja from his house at Khursipar,

after recording the said information as per Ex.P/1, he along with staff and witnesses proceeded for the place of occurrence Subhash Nagar Market, Khursipar, Shop No.48. After reaching there as per notice Ex.P/2 search of the police staff and witnesses was got made by the accused. As per Ex.P/7 the accused/appellant was informed about his legal right of being searched by the Investigating Officer or the Gazetted Police Officer, on which he consented for being searched by the police. Thereafter, his house was searched upon which Ganja wrapped in bedsheet weighing 750 gm was recovered from his house vide Ex.P/3 in presence of witnesses. Identification Panchanama of the Ganja was prepared vide Ex.P/4. On the spot the accused was arrested vide Ex.P/5 and information about the search and seizure was sent to the higher authority through wireless message vide Ex.P/6. As per Ex.P/8 the seized Ganja was weighing 750 gm, from which two samples each of 30 gms were drawn. Spot map Ex.P/11 was prepared. After returning, FIR (Ex.P/12) was registered under Section 20(b) of the NDPS Act against the appellant. The seized articles were sent for chemical examination to FSL vide Ex.P/13 and as per FSL report, the seized articles were found to be Ganja vide Ex.P/16. After completion of investigation, charge sheet was filed against the accused/appellant under Section 20(b) of the NDPS Act and thereafter, charge was framed by the trial Court against him under Section 20(b)(i) of the NDPS Act which was denied by him.

03. So as to prove its case, the prosecution examined PW-1 Ranjit Singh, PW-2 Chandrika Prasad, PW-3 TR Kanwar (S.I.), PW-4 B.D. Dhupar (S.I.) and PW-5 Harbansh Singh Dhruv. 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. In his defence, he stated that since he did not give Rs.2,000/- demanded by the police, he has been falsely implicated in this crime.

04. 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 para-1 of this judgment.

05. No one appears on behalf of the appellant despite repeated calls when the matter is taken up for hearing. Hence, considering the fact that this appeal is pending since 2003, this Court is left with no other option but to appoint a counsel through High Court Legal Services Committee on behalf of the appellant.

Shri A.K. Gupta, Advocate, present in the Court, empanelled Lawyer of High Court Legal Services Committee, on being asked by this Court is ready to argue the matter. Therefore, this Court has appointed Shri A.K. Gupta, Advocate, to argue the matter on behalf of the appellant. Registry is directed to inform the High Court Legal Services Committee in this regard for doing the needful.

06. Learned counsel for appellant submits that in this case no independent witness has supported the prosecution case. PW-1 Ranjit Singh and PW-2 Chandrika Prasad have not supported the prosecution case. PW-1 Rajit Singh specifically states that he has no knowledge as to who is owner of the house in question and how many persons reside

therein. Therefore, seizure of the contraband from exclusive possession of the appellant has not been proved by the prosecution. He submits that the prescribed procedure under Sections 40 & 52 of the NDPS Act have not been complied with by the police while effecting search and seizure. Further, the trial Court has not properly considered the defence taken by the accused that due to non-fulfillment of illegal demand of Rs.2,000/- by the police he has been falsely implicated. Therefore, the accused/appellant deserves to be acquitted of the charge by giving him benefit of doubt.

07. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant which warrants no interference by this Court.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-3 TR Kanwar, Sub Inspector, P.S. Chhawani, has proved this fact that upon receipt of information through wireless that one person is selling Ganja from his house, after recording the said information as per Ex.P/1, he alongwith the staff and witnesses reached the place of occurrence, gave search of staff, witnesses and himself from the accused, on which nothing objectionable was found in their possession vide Ex.P/2 and thereafter, the appellant was made aware of his legal right of being searched either by the police or the Gazetted Officer and he consented for being searched by the police vide Ex.P/7. He states that upon search of house of the appellant, Ganja wrapped in bedsheet was recovered vide Ex.P/3, which upon weighment was found to be

750 gm, from which two samples each of 30 gms were drawn vide Ex.P/8 and sent for chemical examination and as per FSL report Ex.P/16, it was confirmed to be Ganja. He states that the accused was arrested on the spot itself vide Ex.P/5 and immediately thereafter, information regarding the above proceedings was sent through wireless to the higher authority vide Ex.P/6.

10. PW-5 Harbansh Singh Dhruv has also supported the evidence of PW-3 TR Kanwar. He states that in his presence the Ganja was seized from the house of the appellant and he was arrested. He admits his signature over the documents of Ex.P/1 to P/5. There is no contradiction or omission in the statement of this witness.

11. PW-4 BD Dhupar, Sub Inspector, states that soon after the incident, FIR (Ex.P/12) was registered by him and that the proceedings under the NDPS Act were conducted by TS Kanwar (PW-3). No any suggestion was given by the defence to the witnesses to establish the defence of false implication of the accused on account of his denial to give Rs.2,000/- allegedly demanded by the police.

12. In the present case, though PW-1 Ranjit Singh and PW-2 Chandrika Prasad, independent witnesses, have not supported the prosecution case but the police personnel i.e. PW-3 TR Kanwar, S.I. who is the investigating officer, PW-4 B.D. Dhupar, S.I. and independent witness PW-5 Harbansh Singh Dhruv have fully supported the prosecution case. 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.

13. 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**].

14. In the present case, though some of the independent witnesses (PW-1 & PW-2) have not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about search and seizure of the contraband. The defence has utterly failed to elicit anything from them which could suggest that they 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 as also from the evidence of independent witness PW-5 Harbansh singh Duruv. Since from the oral and documentary evidence it stands proved that the Ganja was seized from the house of the appellant, there was no need for compliance of Section 50 of the NDPS Act i.e. personal search of the accused. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

15. 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)(i) of the NDPS Act cannot be faulted with and the same are hereby affirmed.

16. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to have been released from jail after serving out the entire sentence imposed upon him. Therefore, there is no need to pass any further order.

Sd/

(Gautam Chourdiya)

Judge