

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1168 of 2003

Reserved on : 11.12.2019

Delivered on : 06.02.2020

Triloki Gupta, aged about 49 years, S/o Mata Badal Gupta, R/o Near Shitla Mandir, P.S. Azad Chowk, Handipara, Raipur, District- Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Station House Officer, Police Station- Nagarnar, District- Bastar (C.G.)

---- Respondent

For Appellant : Mr. Sachin Nidhi, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 01.11.2003 passed by Special Judge (NDPS Act), Bastar at Jagdalpur (C.G.) in Special Case No. 19/2003, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985") and sentenced to undergo R.I. for 2 years and fine of Rs. 7000/- with further default stipulations.
2. As per case of the prosecution, on 09.05.2003, information was received by Sub-Inspector- Alim Khan from informer that one person carrying ganja in suitcase is standing near Dhanpunji Naka. After receiving the information and after complying with all the legal

formalities, the police officer reached to the spot where he was found the appellant carrying with one suitcase and after search of the suitcase, contraband article ganja was found. The matter was investigated, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) The independent witnesses have not supported version of the prosecution, but the trial court failed to appreciate this aspect of the matter.

(ii) The provisions of the Act, 1985 have not been complied with, therefore, case of the prosecution is not established.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. From evidence of Sub-Inspector- Alim Khan (PW-1), it is established that upon receiving the information and after complying with all the legal formalities, he searched the suitcase of the appellant after giving him notice to be searched by Magistrate or Gazetted Officer and the suitcase was found with contraband article which is weighed and found to be 2 Kg. As per version of this witness, two samples of 30

grams each were prepared and sample and rest of the article was seized and sealed. The seized article were handed over to In-charge of Malkhana for safe custody. The sample was sent for examination to Forensic Science Laboratory and as per the report, test of ganja was found positive. Version of this witness is supported by version of Head-Constable- Jankus Toppo (PW-2) who was In-charge of Malkhana of Police Station- Nagarnar and he deposited the seized article in Malkhana in safe custody and the same was sent for examination by Constable- Rattu Netam. Version of this witness is unrebutted, therefore, it is established that the appellant was in possession of 2 Kg. contraband article ganja.

7. From the entire evidence, it is established that the seized article was kept in safe custody of Malkhana as per Section 55 of the Act, 1985. Information of search and seizure was sent to higher authority i.e. Additional Superintendent of Police, Jagdalpur as per Ex.P/21 which is compliance of Section 57 of the Act, 1985. Further, Section 50 of the Act, 1985 after giving notice to the appellant is also complied with, therefore, the argument advanced on behalf of the appellant is not sustainable.
8. The act of the appellant falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 for which the trial court convicted the appellant and his conviction is hereby affirmed.

Heard on the point of sentence.

9. The appellant has suffered jail sentence from 10.05.2003 to 31.07.2003 i.e. for 2 months 21 days. Looking to the fact that the

incident took place 17 years ago and no useful purpose will be served in sending the appellant in jail again. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial court shall remain intact.

10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge