

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 702 of 2007**

Bhagwan Lal Sahu, son of Pyari Lal Sahu, aged about 34 years,
 Profession- Farmer, resident of village Tippani, Police Station-
 Bhakara, District Dhamtari (Chhattisgarh)

---Appellant

Versus

State of Chhattisgarh, Through Police Station City Kotwali, Dhamtari,
 District Dhamtari(Chhattisgarh)

---- Respondent

For Appellant	Shri Vikram Dixit, Advocate.
For Respondent/State	Shri Ashish Gupta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

24/02/2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 20.6.2007, passed by the Special Judge (NDPS) Act, Dhamtari(CG) in Special Sessions Trial No.15 of 2007, whereby and whereunder the appellant has been convicted under Section 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances, 1985(for short the NDPS Act) and sentenced to undergo R.I. for 5 years and to pay fine of Rs.50,000/-, in default of payment of fine to further undergo S.I. for 1 year.
2. None appeared on behalf of the appellant for arguing this appeal despite repeated calls. In the given facts and circumstances of the case, in particular the long pendency of the appeal, this Court deems it appropriate to appoint a counsel in this case from the empaneled Lawyer of High Court Legal Services Committee for arguing the

appeal on behalf of the appellant.

3. Shri Vikram Dixit, Advocate, present in the Court empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court appoints Shri Vikram Dixit, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
4. Brief facts of the case are that on 6.4.2002 at about 4.45 pm, Asst. Sub-Inspector, Police Station, City Kotwali, Dhamtari, Ashok Kumar Dwivedi, received information from the informant that two persons have get down from the Bus coming from Jagdalpur and both have kept Ganja in plastic bags of white colour and one of them is a Ganja seller of Makeswar Ward, Dhamtari. The information was reduced into writing vide Ex.P1 and due to lack of time, without obtaining search warrant Ashok Kumar Dwivedi along with his staff left for search after recording his departure in Rojnamcha Sanha and the copies of Panchanamas were sent to S.D.O.P. After reaching to the spot, he gave notice to the witnesses Santosh Ramtake and Chhabilal under Section 160 Cr.P.C. to present for search vide Ex.P3. Vide Ex.P12C, the information received from the informer was recorded into Rojnamcha Sanha. The search party along with the witnesses reached near Makeswar Ward, Dhamtari and gave notice to the accused/appellant Bhagwanlal under Section 50 of the NDPS Act and after consent of the appellant search was made and before the Police Officer. Talashi Panchanama was made as per Ex.P5 and 5kg 250gm ganja kept in plastic bag was seized from the possession of the appellant vide Ex.P7. The ganja was weighed vide Ex.P6. Two samples of 100-100 gm each were prepared from the seized packets

and official seal was affixed on it and Investigating Officer, Ashok Kumar Dwivedi (PW5) prepared inquest vide Ex.P8. After returning to Police Station, FIR vide Ex. P9 was lodged. The seized article was kept in safe custody of Police and thereafter, it was sent for examination to FSL. In examination, the article was found ganja, the FSL report is Ex.P10.

5. After completion of investigation, charge sheet for the offence under Section 20(b)(1) of the NDPS Act was filed against the accused/appellant. The accused/appellant denied the charges and prayed for trial.
6. So as to hold the accused/appellant guilty, prosecution has examined as many as 6 witnesses i.e. Gulab Singh (PW1), Head Constable- Ramesh Sahu(PW2), Chhabilal(PW3), Santosh Ramtake(PW4), Asst. Sub-Inspector- Ashok Kumar Dwivedi(PW5), and Constable- Bhenuram Verma(PW6). Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him and taken plea that he has been falsely implicated in this case. However, no defence witness has been examined by him. After completion of trial, the accused/appellant was convicted and sentenced as mentioned in para 1 of this judgment.
7. Learned counsel for the appellant submits that there are contradictions and omissions in the statements of the witnesses and one of the witness namely- Chhabilal (PW3) has turned hostile and he has not supported the case of prosecution. He submits that there is non-compliance of the mandatory provisions of NDPS Act and only on the basis of interested witnesses, trial Court has convicted and sentenced the appellant under the aforementioned Sections of the NDPS Act. He further submits that the seizure of ganja is also not

made according to law, therefore, conviction of the appellant may be set aside.

8. On the other hand, learned counsel for the State/respondent supported the impugned judgment and submits that the trial Court after considering the overall evidence has rightly convicted and sentenced the appellant as aforementioned.
9. Heard learned counsel for the parties and perused the material available on record.
10. Ashok Kumar Dwivedi (PW5) has clearly stated in his deposition that he received the information on 6.4.2002 from the informer regarding keeping of ganja by two persons and they get down from the bus coming from Jagdalpur, on which, he recorded this information into Rojnamcha Sanha at No.423. Thereafter, he sent the information to his superior authority and proceeded for search and after giving notice to the witnesses- Santosh Ramtake and Chhabilal under Section 160 of the NDPS Act, made search in their presence. The accused/appellant gave his consent for search and after search, 5kg 250 gm ganja was seized from him kept in a plastic bag. On the spot, the seized article was primarily tested by smelling and burning and it was found ganja. Thereafter, two samples of 100-100 gm each were prepared from the seized article and it was sent for examination to the FSL, which was confirmed as ganja. Thus, prosecution has proved its case beyond reasonable doubt that the appellant was possessing 5kg 250gm ganja and Ashok Kumar Dwivedi (PW5) has followed the procedure and search and seizure was made strictly in accordance with the provisions of NDPS Act.
11. Statement of Ashok Kumar Dwivedi(PW5) is supported by Gulab Singh (PW1), who has also proved informant report, Ex.P1 and

Talashi panchanama (Ex.P2). Ex.P1 and P2 are unchallenged in cross-examination. The sealed property was kept in custody of Police. Ramesh Sahu (PW2) has proved Talashi Panchanama Ex.P2 and entry of the article made in register of the seized property, Ex.P2C. Chhabilal (PW3) has not supported the case of prosecution and he has turned hostile, however, he has admitted his signatures on documents Ex.P3 to P8. Santosh Ramtake (PW4) has supported the case of prosecution and he proved documents Ex.P4 to P8. Bhenuram Verma (PW6) has proved Talashi Panchanama Ex.P2.

12. Perused the entire evidence and statements of the witnesses. There is no reason to disbelieve the testimony of the above witnesses and no substantial or cogent reason has been assigned by the accused/appellant as to why he has been falsely implicated in this case and there is no major contradiction or omission in the statement of Ashok Kumar Dwivedi (PW5).

13. It is well settled principle of law that a Police Officer can or cannot be a sole eye witness 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.

14. 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 trustworthy, 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, AIR 2013 Supreme Court 3344].**

15. Thus, keeping in mind the principles of law laid down by Hon'ble the Supreme Court, referred to above and on scrutiny of the overall evidence on record both 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 the appellant guilty under Sections 20(b)(ii)(B) of the NDPS Act, cannot be faulted with the same and are hereby affirmed.

16. Resultantly, the appeal being devoid of merits is liable to be 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