

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 384 of 2008**

- Rishi Ram Dhruw, S/o Budhiyar Dhruw, Caste Gond, aged about 47 years, Occupation Tailor, R/o Village Kukrel, P. S. Arjuni, District Dhamtari (C.G.). (On Bail)

----Appellant**Versus**

- State of Chhattisgarh, through : P. S. Sihava, District-Dhamtari (C.G.).

---- Respondent

For Appellant : Shri D. N. Prajapati, Advocate.
For Respondent/State : Shri Anand Verma, Dy. G. A.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****23.06.2020**

- (1) The matter is heard through Video Conferencing.
- (2). This appeal arises out of the judgment of conviction and order of sentence dated 29.03.2008 passed by the Special Judge (N.D.P.S. Act), Dhamtari in Special Criminal Case No.04/2007, convicting the accused/appellant for the offence punishable under Section 20 (a) (i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act")

and sentencing him to undergo rigorous imprisonment for six months with fine of Rs. 5,000/-, in default of payment of fine to further undergo simple imprisonment of three months.

(3) Case of the prosecution, in brief, is that 29.3.2004, at about 13.30 hours U.R. Deewan, Sub Inspector posted at Police Station Arjuni received an information from informant that one person namely Rishiram Dhruv was cultivating the cannabis plants (*Ganja*) in his land and thereafter he alongwith Police party and the witnesses went to the spot and recovered five plants of the alleged ganja in open place (Badi) of the appellant. All the mandatory provisions contained in Sections 47, 50 & 55 of the NDPS Act have duly been complied with by the Investigating Officer while making 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 for his search was given by the appellant. After search & recovery of the said cannabis plant (ganja), arrested the appellant for the offence under Section 20(a) of the NDPS Act.

(4). After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (a) of the NDPS Act. The Special Judge (the NDPS Act) framed charges against the accused/appellant under Section 20(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused/appellant denied the charges levelled against him and prayed for trial.

(5). So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses namely- Ramadhar (PW-1), Sanjay Kumar Soni (PW-2), U.R. Deewan (PW-3), Anil Kesharwani (PW-4), Sanjay Kumar Lanje (PW-5), Brijlal Tunde (PW-6) and Santosh Kumar Sahu (PW-7). 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.

(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. However, no defence witness has been examined on behalf of the accused/appellant.

(7). Learned counsel appearing for the accused/appellant submits that mandatory provisions under Sections 47, 50 and 55 of the NDPS Act have not been complied by the Investigating Officer while making search & seizure of the alleged cannabis plants (*Ganja*). He further submits that the appellant has been falsely implicated in the crime in question as all the cannabis plants were not found in his exclusive possession and ownership of the land, in which the cannabis plants were planted, has also not been proved. He also submits that no documentary evidence was adduced to the effect that land in which the cannabis plants were planted belongs to the appellant and merely on the basis that in the open place of forest near the house of appellant, some

cannabis plants were planted, the appellant has been implicated in the crime in question and, therefore, trial Court is absolutely unjustified in convicting and sentencing the accused/appellant as mentioned above.

(8) Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions contained in Sections 47, 50 & 55 of the NDPS Act have been duly complied with by the prosecution while making search and seizure of the alleged cannabis plants (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) On a perusal of Spot Map (Ex.P-23), it appears that neither alleged land belongs to the appellant nor he is the owner of the said land. The Forest Department has produced the map of the land during the course of investigation.

(11) Ramadhar (PW-1) is the main witness in this case and he has not been declared hostile by the prosecution and he was treated as prosecution witness. He admitted in his statement that the alleged cannabis plants were kept in Police Help Center and

no plants were seized from the house or land owned by the accused/appellant and all the necessary documents, such as Exs. P/1 to P/9 were prepared and signed by the police officials in the Police Help Centre. He also stated that no search and seizure was made in his presence in the house/land of the accused/appellant.

(12) Sanjay Kumar Soni (PW-2), Patwari, has also stated in his evidence that he has no personal knowledge about the incident but he heard from the villagers that the land, from which the cannabis plants were seized, belongs to the appellant whereas the said land belongs to the Forest Department vide Ex.P-10 therefore, all the relevant documents i.e. Khasra and map of the said land were obtained from the forest department while investigating the matter. He admitted in his paragraph 3 of his deposition that when he examined the place of occurrence, no barbed wire (fencing of *Kurai*) was found at the place of occurrence and he did not know as to who fenced the said land and how many cannabis plants (*ganja*) were seized while making seizure by the police officials.

(13) U. R. Deewan (PW03), Investigating Officer stated in evidence that on 29.3.2004, at about 13.30 hours, he received an information from informant that one person namely Rishiram Dhruv was cultivating the cannabis plants (*Ganja*) in his land. The said information was reduced to writing as Ex. P/2 (*Mukhbir Panchnama*) and Rojnamchasanha vide Exs.P-25 "C" & P-26 "C" and forwarded to the Superior Authority vide Ex.P-13. The police

party went to the spot, apprehended the accused, in presence of witnesses- Ashok Kumar Yadav and Ramadhar Sahu gave him notice (Ex.P-3) 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 vide Ex.P-4. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-5 and nothing was found. On search of the premises of the appellant, five live plants were recovered and on being examined by smelling and burning, it was found to be Ganja plants vide Ex.P-7. On weighment being done of the *ganja* plants it was found to be 900 gms vide Ex.P-8. Two samples, each of 25 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-23, the accused was arrested vide Ex.P-16, intimation of the entire proceedings was forwarded to the office of S.D.O. (P), Kurud. After reaching police station, FIR (Ex-P/18) was registered against the appellant under Section 20(a) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 1.4.2004 with intact seal and report of FSL is Ex.P-25, which confirms the seized contraband to be Ganja.

(14) U. R. Deewan (PW03) has also stated in paragraph 18 of his deposition that possession of the appellant over the land in dispute has not been mentioned in spot map (Ex.P-23) submitted by the

Forest Department and, therefore, he is unable to speak that who is the possession holder of that land. He also stated that he is not in a position to state that land in question belongs to the appellant.

(15) Anil Keshewani (PW-4) is the Head Constable, who sent samples of cannabis plants to the Forensic Laboratory for their examination vide Exs.P-19 & P-20. Sanjay Kumar Lanje (PW-5) is the witness of information, which was sent to the superior Officer as per Ex. P/21 and Ex. P/22 about the incident. He is also not the witness to the incident.

(16) Brij Lal Tande (PW06), who is Forester of the forest Department, has stated that he prepared the Spot Map (Ex. P/23). Thus, neither he is the witness of the seizure of the alleged cannabis plants nor he was present at the place of occurrence when the seizure of the alleged cannabis plants (ganja) was made. He also stated in paragraph 3 of his statement that place of occurrence is the forest land and the same is near Tar Road and that area was covered by barbed wire (fencing of *Turai*) and villagers created *Badi* there. Thus, it cannot be said that the accused/appellant has encroached upon the land, from which the alleged cannabis plants were seized.

(17) It is true that as per FSL report seized plants were found to be cannabis plants vide Ex. P/25 but it has not been proved that the said plants were found from the land of appellant. The seizure memo (Ex.P-9) was made in presence of seizure witnesses namely Ashok Kumar and Ramadhar but they have not supported

the case of the prosecution case stating that articles were kept in Police Help Centre and in their presence no search and seizure was made.

(18) Thus on the basis of oral and documentary evidence available on record this Court is of the opinion that the prosecution has utterly failed to prove beyond all reasonable doubt that the land where the cannabis plants (ganja) was seized belongs to the present appellant or any documentary evidence regarding the exclusive ownership of the appellant did no produce by the Investigating Officer or prosecution and also not proved that the cannabis plants (ganja) seized by the police were being cultivated by the appellant. Therefore, the appeal deserves to be allowed acquitting the appellant of the charge levelled against him.

(19) Consequently, the appeal is allowed. Impugned judgment dated 29.03.2008 is set aside. Appellant is acquitted of the offence under Section 20(a) (i) of the NDPS Act. 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