

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 514 of 2010**

- Pratima Nayak, W/o Kornelo, aged 40 years, R/o Village Jagud, PS Adva, District Gajpati, (Orissa).

----Appellant

Versus

- State of Chhattisgarh, Through P.S. G.R.P, District Raipur

---- Respondent

For Appellant	Shri J.K. Gupta, Advocate.
For Respondent/State	Shri Rahul Jha, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

03/11/2020

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 16.07.2010 passed by the Special Judge, NDPS, Raipur, C.G. in Special Criminal Case No. 09/09, convicting the accused/appellant for the offence punishable under Section 20(b) (ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentencing her to undergo rigorous imprisonment for 3 years with fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for 6 months.
3. Case of the prosecution, in brief, is that on 26.01.2009, PW-7 Arun Ukey, Sub-Inspector, received a secret information from informant that appellant/Pratima Nayak, aged about 40 years, is sitting

under the Bilaspur railway bridge having contraband (Ganja) in her bag. The said information was reduced to writing vide Ex.P-3 and thereafter without warrant search *Panchnama* was prepared vide Ex.P-4. The police party along with the witnesses went to the spot, apprehended the accused/appellant, gave her notice vide Ex.P-5 under Section 50 of the NDPS Act and made her aware of her legal rights, on which she consented to be searched by the police officer vide Ex.P-2. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-1. On written consent being given by the accused/appellant vide Ex.P-2, search of the accused/appellant was made and Ganja like substance was recovered vide Ex.P-7. On weighment being done of the contraband, it was found to be 15 Kg vide Ex.P-6. Two samples, each of 50 gms, were drawn from the said contraband vide Ex.P-7. The samples were duly sealed. The accused/appellant was arrested vide Ex.P-8. FIR Ex.P-14 was registered against the appellant under Section 20 of the NDPS Act. Intimation of the entire proceedings was forwarded to Superior Authorities. The remaining contraband was deposited in Malkhana. Samples were sent to FSL vide Ex.P-9 for chemical examination and as per the report of FSL Raipur, the seized contraband was confirmed to be Ganja vide Ex.P-17.

4. After investigation, charge sheet was filed against the accused/appellant under Section 20 of the NDPS Act. The trial Court framed charge under Section 20(b)(ii) of the NDPS Act against the accused/appellant which was denied by her and she

prayed for trial.

5. The prosecution examined 8 witnesses in support of its case i.e. PW-1 Manjulata Choudhary, PW-2 Saraswati Sonwani, PW-3 Manglu Sahu, PW-4 Suresh Kumar Mishra, PW-5 Bhuvneshwar Mandlesh, PW-6 Imran, PW-7 Arun Ukey and PW-8 Rajendra Singh. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which she denied the incriminating circumstances appearing against her in the prosecution case, pleaded innocence and false implication. However, no witness was examined by her in her defence.
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 accused/appellant as mentioned above.
7. Learned counsel for the appellant submits that appellant has been falsely implicated in this case. He further submits that in this case no independent witness has supported the prosecution case. He also submits that only on the basis of evidence of Police Personnel i.e. PW-7 Arun Ukey, PW-1 Manjulata Choudhary and PW-2 Saraswati Sonwani, appellant has been falsely implicated in this case. He submits that there is total non-compliance of all the mandatory provisions of the NDPS Act and only on the basis of evidence of the interested witnesses, trial Court has wrongly convicted and sentenced the appellant.

Alternatively, learned counsel for the appellant submits that if this Court ultimately comes to the conclusion that the appellant

is guilty of the said offence, considering the fact that the incident took place around 11 years ago, the age of the appellant at the relevant time was 40 years and she has no criminal antecedent, she has already remained in jail for 1 year, 6 months and 5 days, the accused/appellant be sentenced to the period already undergone by her.

8. Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions of the NDPS Act have been duly complied with by the Investigating Officer while making search and seizure of 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 after receiving consent of the appellant, search & seizure was completed, 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. PW-7 Arun Ukey, Sub-Inspector, has proved this fact that upon receiving a secret information from informant that appellant is sitting under the Bilaspur railway bridge having contraband (Ganja) in her bag, the said information was reduced into writing vide Ex.P-3 and thereafter without warrant search *Panchnama* was prepared vide Ex.P-4. The police party along with the witnesses went to the spot, apprehended the accused/appellant, gave her notice vide Ex.P-5

under Section 50 of the NDPS Act and made her aware of her legal rights, on which she consented to be searched by the police officer vide Ex.P-2. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-1. On written consent being given by the accused/appellant vide Ex.P-2, search of the accused was made and Ganja like substance was recovered from her possession vide Ex.-7. On weighment being done of the contraband, it was found to be 15 Kg vide Ex.P-6. Two samples, each of 50 gms, were drawn from the said contraband vide Ex.P-7. The samples were duly sealed. The accused/appellant was arrested vide Ex.P-8. FIR Ex.P-14 was registered against the appellant under Section 20 of the NDPS Act. Intimation of the entire proceedings was forwarded to Higher Authorities. The remaining contraband was deposited in Malkhana. Samples were sent to FSL for chemical examination and as per the report of FSL Raipur, the seized contraband was confirmed to be Ganja vide Ex.P-17. There is no reason to disbelieve the evidence of this witness as he has remained firm during his cross-examination.

11. PW-1 Manjulata Choudhary, Lady Constable, has supported the evidence of PW-7 Arun Ukey on material particulars. She stated that in her presence Ganja was seized from the bag of the appellant and she was arrested. She also stated that personal search of the police party and the witnesses was also made by the appellant vide Ex.P-1 and nothing was found from their possession.
12. PW-2 Saraswati Sonwani, Head Constable, who is the member of the search party also supported the evidence of PW-7 Arun Ukey

and PW-1 Manjulata Choudhary.

13. PW-3 Mangtu Sahu and PW-6 Imran are the independent witnesses in this case but they have turned hostile and not supported the prosecution case. However, PW-3 Mangtu Sahu has admitted his signatures on the documents Exs. P-3, P-4 and P-6 to P-9 and PW-6 Imran has admitted his thumb impressions on all documents.
14. PW-4 Suresh Kumar Mishra, Constable, stated in his deposition that on 28.01.2009 he submitted two sealed packets of Article A-1 and A-2 to FSL, Raipur.
15. PW-5 Bhuvneshwar Mandlesh, Constable No.8, stated in his deposition that he submitted the one copy of seizure, FIR and arrest memo to Superintendent of Police, Railway Raipur vide Ex.P-13.
16. PW-8 Rajendra Singh, Head Constable, stated in his deposition that in his presence Ganja was seized from the bag of the appellant and two samples, each of 50-50 gms, were drawn from the said contraband and sealed and sent to FSL for chemical examination.
17. Looking to the evidence of prosecution witnesses who are the Police Official namely- PW-7 Arun Ukey, PW-1 Manjulata Choudhary and PW-2 Saraswati Sonwani, it is apparent that the procedure prescribed under the NDPS Act had duly been followed by the Investigating Officer while making search & seizure of the contraband *Ganja* and there is no reason to disbelieve the statements of Investigating Officer and other police officials.
18. 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.

19. 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**. The same principle of law has been reiterated by the Supreme Court Judgment in the matter of **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554** and in paragraph 10 it has been observed as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

20. In the recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of ***Rajesh Dhiman vs State of Himachal Pradesh*** in (CRA No.1032 of 2013) and ***Gulshan Rana vs State of Himachal Pradesh*** in (CRA No.1126 of 2019), where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would not *ipso facto* be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.

21. In the present case, though the independent witnesses- PW-3 Mangtu Sahu and PW-6 Imran have not supported the prosecution case but PW-3 Mangtu Sahu has admitted his signatures on the documents Exs. P-3, P-4 and P-6 to P-9 and PW-6 Imran has admitted his thumb impressions on all documents. The police personnel have unequivocally stated about search and seizure of the contraband. As per evidence available on record, defence has utterly failed to elicit anything from them which could suggest that

they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witness. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

22. 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, conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act awarded by the Special Judge appears to be just and proper warranting no interference and the same is affirmed by this Court.

23. As regards the sentence, considering the facts and circumstances of the case, the fact that the appellant was the first offender of 40 years on the date of incident, she has no criminal antecedent, she has remained in jail for one year, six months and five days, the incident took place around 11 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein *considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone*, this Court is of the opinion that in the present case also no useful purpose would be served in again sending the appellant back to jail at this stage and the ends of justice would be served if she is sentenced to the period

already undergone by her.

24. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20 (b) (ii) (B) of the NDPS Act, she is sentenced to the period already undergone by her. As per receipt dated 19.07.2010 (Annexure-A-2), the appellant has already deposited the fine amount of Rs.5,000/-.

25. The appellant is reported to be on bail, therefore, her bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh