

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 497 of 2011**

- Min @ Domu Naiyak S/o Ram Naiyak aged about 19 years  
Caste Rana R/o Village Ghumar P. S. Vyapari Muda Distt.-  
Koraput, Orissa.

**----Appellant****Versus**

- State of Chhattisgarh Through P. S. Bodhghat (Jagdalpur)  
Distt.- Bastar, C. G.

**---- Respondent**

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For Appellant : Ms. Usha Chandrakar, Advocate.  
For Respondent/State : Mr. Devesh Chand Verma, G.A..

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**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board****17.06.2020**

(1) This appeal arises out of the judgment of conviction and order of sentence dated 28.02.2011, passed by the Special Judge (N.D.P.S. Act), Jagdalpur in Special Criminal Case No. 12/2010, convicting the accused/appellant for the offence punishable under Section 20 (b) (ii-B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "NDPS Act") and sentencing him to undergo rigorous imprisonment for five years with fine of

Rs. 5,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

(2) As per prosecution case, on 20.1.2010, Tillu Singh Thakur (PW06), Sub-Inspector Police Station, Bodhghat received secrete information from informant that one person aged about 19-20 was carrying contraband article *Ganja* in two bags standing near Check-post Aadabal. The said information was reduced into writing vide Ex. P-1 and also recorded in Rojnamchasana and forwarded the same to the Superior Officer vide Ex.P-2. The police party went to the spot, apprehended the accused, in presence of witnesses namely- Govind Chakrvarti (PW01) & Ramarao gave him notice (Ex.P-4) 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. Personal search of the police party and the witness were also made by the appellant vide Ex.P-5 and nothing was found. On search of the two bags, which the appellant was carrying, *Ganja* like substance was recovered and on being examined by smelling and burning, it was found to be *Ganja* vide Ex.P-6 & P-7. On weightment being done of the contraband it was found to be 10 kgs. Four samples, each of 50-50 gms were drawn from the said contraband and seizure memo (Ex.P-15) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Ex. P/14. Spot map was prepared vide Ex.P-17, the accused was arrested vide Ex.P-16, Intimation of the entire proceedings was forwarded to the

office of Superintendent of Police Jagdalpur vide Ex. P/28. After reaching police station, FIR (Ex-P/22) was registered against the appellant under Section 20(b) of the NDPS Act. The seized contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 11.11.2010 with intact seal and report of FSL is Ex.P- 31, which confirms the seized contraband to the *Ganja*.

(3) After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charges against the accused/appellant under Section 20 (b) (ii-B) of the NDPS Act. Accused denied the charges levelled against him and prayed for trial.

(4) So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses namely- Govind Chakervarti (PW-1), Seemul Das (PW-2), Onkar Prasad Sahu (PW-3), Ashok Deshmukh (PW-4), Narendra Kumar Bental (PW-5), Tillu Singh Thakur (PW-6), Jogi Lal Budke (PW-7) and Sukal Singh Gavde (PW-8). 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. No defence witness has been examined on behalf of the accused person to prosecute his case.

(5) 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 1 of this judgment.

(6) Learned counsel for the appellant/accused submits the appellant has been falsely implicated in the crime in question as there is no evidence on record to connect the appellant with the crime in question. He submits that compliance of the mandatory provisions under Sections 41, 42 and 50 the NDPS Act has not been made while making search and seizure of the alleged *Ganja*. He further submits that in the instant case, independent witness namely Govind Chakervarti (PW-1) has not supported the case of the prosecution stating that his signature was obtained on all the concerned documents at his shop (betel shop), not at the place of occurrence. Therefore, the learned Special Judge has erred in convicting and sentencing the accused/appellant as aforementioned.

(7) Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions contained in Sections 41, 42 & 50 of the NDPS Act have been duly complied with by the prosecution 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 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.

(8) I have heard learned counsel appearing for the parties and perused the material available on record.

(09) Govind Chakarvarti (PW-1), independent witness has stated that he made his signature on all the relevant documents such as Exs. No. P-1 to P17 and they are prepared in his presence.

(10) Omkar Prasad Sahu (PW03) has stated that he received seized articles and kept those seized articles in malkhana in safe custody and he also proved the document (entry of seized articles) vide Ex. P/20 and samples were sent for chemical examination on 21.01.2010.

(11) Tillu Singh Thakur (PW06), sub-Inspector received information from an informant that one person aged about 19-20 was carrying contraband article -*Ganja* in two bags standing near check-post Aadabal. The said information was reduced into writing vide Ex.P/01 and also recorded in Rojnamchasana and forwarded to the Superior Officer vide Ex.P-02. The police party went to the spot, apprehended the accused, in presence of witnesses namely- Ramarao & Govind Chakarvarti (PW01) gave him notice (Ex.P-04) 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. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-05 and nothing was found. On search of the bags, which the appellant was carrying, *Ganja* like substance was recovered and on being examined by smelling and burning, it was found to be *Ganja* vide Ex.P-06 & P-07. On

weighment being done of the contraband it was found to be 10 kgs. Four samples, each of 50 gms, were drawn from the said contraband and seizure memo (Ex.P-12) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Ex. P/14. Spot map was prepared vide Ex.P-17, the accused was arrested vide Ex.P-16, Intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Jagdalpur (C.G.) vide Ex. P/28. After reaching police station, FIR (Ex-P/22) was registered against the appellant under Section 20(b) 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 11.11.2010 with intact seal and report of FSL is Ex.P-31, which confirms the seized contraband to be Ganja.

(12) Looking to the statements of prosecution witnesses who are the Police Official namely- Omkar Prasad Sahu (PW03), Ashok Deshmukh (PW04), Narendra Kumar Bental (PW05), Jogi Lal Budke (PW07) & Sukal Singh Gavde (PW08) in particular, the statement of investigating Officer- Tillu Singh Thakur (PW06), Sub-Inspector, it is apparent that the procedure prescribed under Section 41, 42 & 50, of NDPS Act had duly been followed by the Investigating Officer while making seizure of the contraband *ganja* and there is no reason to disbelieve the statements of Investigating Officer and other police officials.

(13) 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.

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.”

(14) In the present case, though the independent witness-Govind Chakarverti (PW01) has not supported the prosecution case but he admits his signature on documents i.e. P/1 to P/17. 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.

(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) (ii-B) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

(16) Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed. Vide letter dated 27.05.2020 it is reported that the appellant has been released from jail after completion of jail sentence & fine awarded to him, therefore, there is no need to pass any order with regard to his surrender.

Sd/-  
(Gautam Chourdiya)  
Judge

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