

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10-01-2020

Delivered on 06-02-2020

CRA No. 23 of 2011

- Shailesh Tinna w/o. Yogesh Tinna, aged about 32 years, resident of village Naranpur, Police Station Tendukheda (Orissa).

---- Appellant

Versus

- State of Chhattisgarh through Police Station G.R.P. Raipur Chhattisgarh.

---- Respondent

For Appellant : Mr. Manoj Mishra Advocate appears as
Amicus Curiae
For respondent/State : Mrs. Smita Jha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 10-11-2010 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Raipur in Special Case No. 7 of 2009, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (c) of the Act, 1985 and sentenced her to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,00,000/- with default stipulations.

2. As per prosecution case, on 5-1-2008 Investigating Officer namely A.K. Uike (PW/8) received information from Mukhbir at about 7.15 a.m. that in the evening four persons (two men and two women) are coming to Raipur by train (Link Express) having Ganja (Cannabis) in the bags and basket. After completion of legal formalities Investigating Officer proceeded towards the spot with police personnel. Investigating Officer caught the appellant in the railway station platform under the over bridge. He gave notice to the appellant about the right to be searched by Gazetted Officer or Magistrate but she opted to be searched by the said officer and thereafter on search a bag and basket was found in her possession in which 25 kgs of contraband article Ganja was found. Two samples of 50 grams each were separated from the said article and sealed. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) The trial court failed to see that independent seizure witnesses i.e., PW/6 Kishore Jagne and PW/7 Dilip Kumar Mochi have not supported the prosecution case, but the trial court recorded finding on the basis of Police Officer which is not permissible under the law.
- ii) There is clear violation of mandatory

provisions of Section 41, 42, 43, 50 & 57 of the Act, 1985, therefore, conviction of the appellant is not proper.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. PW/8 Station House Officer (G.R.P) A.K. Uike (Investigating Officer) deposed before the trial court that he received information that two persons and two women are coming to Raipur by train (Link Express) and they are in possession of contraband article Ganja. The matter was recorded by the Investigating Officer as per Ex. P/3 and it is mentioned in Rojnamcha Sanha and thereafter he prepared a search warrant and information was sent to Deputy Superintendent of Police, Railway, Raipur. Thereafter, he rushed to railway station with police personnel and independent witnesses and notice was served to appellant regarding her right to be searched by Gazetted Officer or Magistrate, but she opted to be searched by the Police Officer and after searching he found contraband article in her possession which was seized as per Ex.P/9. Two samples of 50

grams each were separated from the said article and sealed. Seized article was deposited in Malkhana for safe custody. Information regarding search and seizure was prepared as per Ex.P/16 and P/17 which were sent to Superintendent of Police, Raipur. Samples were sent to FSL for examination and report thereof was received as per Ex.P/18 in which test of Ganja was found positive. Seized contraband article Ganja was produced before the trial court by this witness and after cross examination his version is unrebutted. Version of this Investigating Officer is supported by version of Asst. Sub Inspector namely S.L. Rajput (PW/5) and lady constable Saraswati Sonwani (PW/4). Again, version of this witness is supported by version of constable Suresh Kumar Mishra (PW/1) who deposited the samples A-1 and A-2 in FSL. Information to higher officer is supported by version of Head Constable Mahendra Ram (PW/2). Deposit of contraband article Ganja in safe custody is supported by version of Head Constable Rajendra Singh (PW/3) who was Incharge of Malkhana who deposited the seized article in Malkhana and sample was sent for examination in FSL by Constable Suresh Kumar (PW/1) is also established by this witness.

7. From the entire record, it is clearly established that contraband article was found in possession of the appellant to the tune of 25 kgs which is commercial quantity. From the evidence, it is clear that information was sent to higher officer as per provisions of Section

42 (2) of the Act, 1985. Appellant was provided opportunity as per provisions of Section 50 of the Act, 1985. Contraband article was kept in safe custody of Malkhana as per provisions of Section 55 of the Act, 1985. Information regarding search and seizure was sent to higher officer as per provisions of Section 57 of the Act, 1985, therefore, argument advanced on behalf of the appellant that the mandatory provisions of the Act, 1985 have not been complied with, is not sustainable.

8. On an overall assessment of evidence, appellant was in possession of 25 kg of Ganja which is commercial quantity, therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(c) of the Act, 1985 for which the trial Court has convicted the appellant and this court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed.

9. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for her arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju