

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.179 of 2020

Judgment Reserved on : 13.3.2020

Judgment Delivered on : 3.6.2020

Mayank Bareth, son of Hukram Bareth, aged about 19 years, resident of Baikunthpur, P.S. City Kotwali, Raigarh, District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station City Kotwali, Raigarh, District Raigarh, Chhattisgarh

--- Respondent

For Appellant	:	Shri Hari Agrawal, Advocate
For Respondent	:	Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 17.1.2020 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the Act'), Raigarh in Special Criminal Case under the N.D.P.S. Act No.14 of 2018, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 20(b)(ii)(B) of the Act	Rigorous Imprisonment for 1 year and fine of Rs.5,000/- with default stipulation

2. Prosecution case, in brief, is that on 12.8.2018, Assistant Sub-Inspector U.S. Vishwal (PW7), posted at Police Chowki Jutemill, Police Station City Kotwali, Raigarh received information from an

informant that one Mayank Bareth (the Appellant) of Village Baikunthpur is carrying illegal substance Ganja and coming towards Village Kayaghat. He recorded the information in Rojnamcha Sanha (Ex.P24), called witnesses and prepared Mukhbir Suchna Panchnama (Ex.P36). In compliance of the provision contained in Section 42(2) of the Act, he forwarded the information to the higher officer City Superintendent of Police, Raigarh vide Ex.P27. He proceeded to the spot along with raid party and witnesses. He stopped the Appellant at the spot. He gave a notice (Ex.P2) under Section 50 of the Act to the Appellant. He obtained consent (Ex.P3) of the Appellant for search. He also gave search of the police/raid party including him and search of the witnesses vide Ex.P5 and P6, respectively. He made search of the Appellant vide Ex.P7. The Appellant had kept one bag with him made of cloth in which 2 plastic bundles were found to be kept. In said 2 plastic bundles, Ganja like substance was found which was recovered vide Ex.P9. Identification of the recovered Ganja was done vide Ex.P10. On weighing, total quantity of the recovered Ganja was found to be 2 Kgs. Weight panchnama (Ex.P12) was prepared. The recovered Ganja was mixed and a panchnama thereof (Ex.P13) was prepared. 2 sample packets each of 50 Gms. were prepared and a panchnama thereof (Ex.P14) was prepared. The sample packets and the remaining quantity of Ganja were sealed and a panchnama thereof (Ex.P16) was prepared. All the articles were seized vide seizure memo (Ex.P17). The Appellant was arrested vide Ex.P30. Investigating Officer U.S. Vishwal (PW7) handed over all the seized articles to Head Constable Sanjay Sharma (PW6) for depositing the same in the Malkhana. Head Constable Sanjay Sharma (PW6) deposited the

seized articles in the Malkhana. The sample packets were sent to the Forensic Science Laboratory through memo dated 14.8.2018 (Ex.P32) of the Superintendent of Police. Acknowledgment of receipt of the sample packets in the FSL is Ex.P33. Report of the FSL is Ex.P34, which is positive. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charge was framed against him.

3. In support of its case, the prosecution examined as many as 8 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that without there being any sufficient and clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. Mandatory provision of Section 55 of the Act has not been complied with. From perusal of the documents prepared by the Investigating Officer, it reveals that the columns of time in the documents were earlier left blank and time was filled in those documents later on collectively at a time because all the columns of time have been filled in by a different pen. Referring to the notice (Ex.P2) under Section 50 of the Act and consent (Ex.P3) of the Appellant, it was further submitted that according to Ex.P2, the notice was given to the Appellant at 15:20 hours and the consent

(Ex.P3) was obtained at 15:10 hours. According to the entries of weight panchnama (Ex.P14), weight of the recovered Ganja was done at 16:40 hours while physical verification of the weighing machine was done vide Ex.P11 at 16:50 hours. According to the prosecution, the sample packets which were sent to the FSL were marked as A and B, but, there is no document available on record to show that those sample packets were ever marked as A and B. Both the sample packets were sent to the FSL vide memo dated 14.8.2018 (Ex.P32) of the Superintendent of Police and its acknowledgment (Ex.P33) issued by the FSL is of dated 24.8.2018. There is no entry in the Malkhana register to show that when Constable Shailendra Singh Paikra obtained the sample packets from the Malkhana for their delivery in the FSL. In these circumstances, the statement of Constable Shailendra Singh Paikra is essential, but his statement has not been recorded. Other material witness is Malkhana Moharrir, who had received the seized articles in the Malkhana. His statement has also not been recorded. Thus, in what condition the seized articles were deposited in the Malkhana and when and in what condition the sample packets were taken out from the Malkhana for delivery in the FSL have not been made clear by the prosecution. Therefore, the entire case of the prosecution is doubtful. The offence has not been duly proved.

6. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. Since both seizure witnesses Satish Chauhan (PW1) and Aman Banjare (PW2) and the person who weighed the recovered Ganja, namely, Shiv Kanshi (PW3) have not supported the case of the prosecution and the case of the prosecution is only based upon the statement of Investigating Officer U.S. Vishwal (PW7) and other police witnesses, a close scrutiny of the statements of the Investigating Officer and other police witnesses is required.
9. First, I shall consider the argument advanced by Learned Counsel appearing for the Appellant with regard to non-compliance of the provision contained in Section 55 of the Act. According to the statement of Investigating Officer U.S. Vishwal (PW7) and the statement of Head Constable Sanjay Sharma (PW6), U.S. Vishwal had handed over the seized articles to Sanjay Sharma for depositing them in the Malkhana and Sanjay Sharma had deposited them in the Malkhana and obtained an acknowledgment thereof. Though in Rojnamcha Sanha (Ex.P48C) there is a mention of deposit of the seized articles in the Malkhana and obtaining of an acknowledgment thereof, the prosecution has not produced the said acknowledgment before the Trial Court. It is not in dispute that at the relevant time, U.S. Vishwal (PW7) was posted as an Assistant Sub-Inspector at Police Chowki Jutemill, Police Station Kotwali, Raigarh. Meaning thereby, he was not the Station House Officer of Police Station Kotwali, Raigarh. Before depositing the seized articles in the Malkhana of Police Station Kotwali, the Station House Officer of Police Station Kotwali had affixed his seal on the seized articles, no document is available on record in this regard. From the statements of the witnesses and other evidence adduced by the prosecution, it reveals that the seized articles were

handed over by Investigating Officer U.S. Vishwal (PW7) to Head Constable Sanjay Sharma (PW6) and Sanjay Sharma (PW6) had deposited the said seized articles in the Malkhana. Thus, it is well established that there is non-compliance of the provision of Section 55 of the Act.

10. As regards the other argument advanced by Learned Counsel appearing for the Appellant, I have gone through the entire record of the Court below including the statements of the witnesses. From perusal of all the documents prepared by Investigating Officer U.S. Vishwal (PW7), it reveals that most of the documents are in printed proforma. From perusal of the documents, it also appears that time of preparation of most of the documents was filled in those documents by a different pen. In the notice (Ex.P2) under Section 50 of the Act, time of 15:20 hours is mentioned while in the consent (Ex.P3) of the Appellant time of 15:10 hours is mentioned. According to the entries of weight panchnama (Ex.P14), sample packets were prepared at 16:40 hours while physical verification (Ex.P11) of the weighing machine was done at 16:50 hours, which is not possible. Though Investigating Officer U.S. Vishwal (PW7) has stated that there was a mistake in mentioning time in the documents, his explanation is not proper. Therefore, the argument of Learned Counsel appearing for the Appellant has a substance that all the documents were prepared collectively at a time after completion of the entire proceedings and as a result thereof there is a difference in mentioning of time in the documents.
11. The sample packets marked as A and B were sent to the FSL vide memo dated 14.8.2018 (Ex.P32), which, according to the

acknowledgment (Ex.P33), were received by the FSL on 24.8.2018. In the FSL report (Ex.P34), it is mentioned that the sample packets were received in the FSL on 4.1.2018, but according to the acknowledgment (Ex.P33) of the FSL, the sample packets were received by the FSL on 24.8.2018. In these circumstances, the date of 4.1.2018 mentioned in the FSL report (Ex.P34) as receipt of the sample packets appears to be a typographical error. According to the entries of Ex.P32 and P33, the sample packets were obtained from the Malkhana and deposited in the FSL by Constable Shailendra Singh Paikra, but Shailendra Singh Paikra has not been examined by the prosecution. There is no entry in the Malkhana register that when were the sample packets obtained by Constable Shailendra Singh Paikra from the Malkhana. According to the memo dated 14.8.2018 (Ex.P32), the sample packets were obtained from the Malkhana on 14.8.2018, but in Rojnamcha Sanha (Ex.P52C), it is mentioned that Constable Shailendra Singh Paikra had obtained the sample packets from the Malkhana on 24.8.2018. Looking to the above, recording of statements of Malkhana Moharrir and Constable Shailendra Singh Paikra was essential. From their statements, it could be clear that when and in what condition and by whom the sample packets were obtained from the Malkhana. Moreover, according to the memo dated 14.8.2018 (Ex.P32) and the FSL report (Ex.P34), the sample packets, which were received in the FSL, were marked as A and B, but there is no document produced by the prosecution to show that the sample packets were ever marked as A and B. In these circumstances, again a doubt arises that the sample packets which were sent to the FSL were the same packets which were prepared at the spot. The

mandatory provision of Section 55 of the Act has also not been complied with.

12. From the above discussion, I find the case of the prosecution to be suspicious. The Trial Court has wrongly convicted the Appellant. The Appellant is entitled to get benefit of doubt.
13. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. He is reported to be in jail. If he is not required in any other case, he be set at liberty forthwith.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge