

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 805 of 2001**

1. Devendra Kumar S/o Yudhistir Baishnav, aged about 27 years, Occupation Labourer, R/o Vilage Dube Umargaon, Police Station Bhanpuri, District Bastar, Jagdalpur (C.G.)

---- Appellant**Versus**

1. The State of Chhattisgarh, through the District Magistrate, Bastar, Jagdalpur (C.G.)

---- Respondent

For Appellant	:	Shri Varunendra Mishra, Advocate.
For Respondent/State	:	Dr. Veena Nair, Deputy A.G.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****18/06/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 01/08/2001 passed by Special Judge, (N.D.P.S. Act) Bastar, at Jagdalpur in Special Case No. 44/2000; whereby the appellant Devendra Kumar stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b)(1) of Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act")	R.I. for 1 year & fine of Rs. 3,000/- in default of fine additional R.I. for 3 months.

- 3) Case of the prosecution in brief is that on 09/08/2000 PW-01 Sub Inspector Naresh Dubey received a secret information that the appellant is illegally carrying Ganja from village Dube Umargaon to village Balenga. On this PW-01 Sub Inspector Naresh Dubey prepared secret information Panchnama vide Ex. P-1 and forwarded a copy of the same to A.S.P. had recorded it

in the Rojnamchasanha. He also prepared the Panchnama Ex.P-5 for search without warrant. Alongwith witnesses he proceeded for the indicated place where the appellant was found standing with a plastic bag. The appellant was informed about his legal rights of being searched by Gazetted Officer or Magistrate or the Police vide Ex. P-6. After consent being given by the appellant vide Ex. P-7, his personal search was made vide Ex. P-10 and Ganja was seized from the plastic bag carried by the appellant vide Ex. P-11. On weightment being done, the Ganja was found 1.600 Kg out of which 2 samples of 25 grams each were drawn and sealed. Sample Panchnama is Ex. P-15 and the seizure memo and Ex. P-16 which bears specimen of seal. The appellant was arrested and the FIR vide Ex. P-18 was registered. Seized article were deposited in Malkhana and acknowledge was received vide Ex. P-19. A detailed report regarding seizure of Ganja from the appellant and his arrest was sent to Superintendent of Police under section 57 of NDPS Act vide Ex. P-20. Information regarding registration of FIR and arrest of the appellant was also sent to the Special Court vide Ex. P-22. The samples were sent for chemical examination through Superintendent of Police Jagdalpur vide Ex. P-23. As per FSL report the sample was found to be Ganja vide Ex. P-24. After recording the statements of the witnesses and completing the formalities of the investigation, charge sheet under section 20(b) of the NDPS Act was filed against the accused appellant.

- 4) The Trial Court framed charge against the accused/appellant under Section 20(b) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 04 witnesses namely PW-01 Naresh Dubey (S.I.), PW-02 Ludruram Kashyap, PW-03 Dilharan Singh (Head Constable) and PW-04 Jageshwar Netam (Head Constable). The 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 and pleaded innocence and false implication.

DW-01 Tulsidas (Kotwar) and DW-02 Madhusudan were examined by the accused in his defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 2 of this judgment.
- 7) Learned counsel for the appellant submits that there is total non-compliance of mandatory provision of Section 50 of NDPS Act. There is no independent witness who supported the prosecution case. The prosecution has failed to prove offence against the appellant. Only on the basis of evidence of the Investigating Officer who was interested in the case, conviction of the accused cannot be sustained, therefore, appeal may be allowed.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that there is no enmity of the appellant with the Investigating Officer and other witnesses of the Police squad. There is no reason to disbelieve the Investigating Officer in this case and strict compliance of all the mandatory provisions of the Act has been made by the Investigating Officer. The Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) It is not disputed by the appellant and the respondent counsel that as per FSL report Ex. P-24 the articles sent for chemical analysis were found to be Ganja.
- 11) The conviction is based on the evidence of PW-01 Naresh Dubey (S.I.), PW-03 Dilharan Singh (Head Constable) and PW-04 Jageshwar Netam (Head Constable).
- 12) As per evidence of PW-01 Naresh Dubey (I.O.) and on

09/08/2000 upon receiving secret information that the appellant is carrying Ganja and going from village Dube Umargaon to village Balenga, he recorded the said secret information vide Ex. P-1 and forwarded the same to Superintendent of Police vide Ex. P-2 and entry in this regard was made in the Rojnamchasanha. Thereafter, he alongwith the staff and two independent witness went to the indicated place and apprehended the accused who was standing there with plastic bag. The appellant was given notice vide Ex. P-6 regarding his search and upon receiving his consent for search by the Police vide Ex. P-7 his search was made and Ganja was seized from the plastic bag which the appellant was holding vide Ex. P-10 & Ex. P-16. On weighment being done, the Ganja was found 1.600 Kg out of which 2 samples of 25 grams each were drawn and the sample as well as the remaining Ganja were duly sealed. FIR vide Ex. P-18 was registered and appellant was arrested vide Ex. P-17. The seized article were deposited in the Malkhana and information regarding the above proceedings was sent to the higher authorities vide Ex. P-20. Spot map Ex. P-21 was prepared and statements of the witnesses were recorded. The samples were sent to FSL for chemical examination vide Ex. P-23 and as per FSL report the samples were found to be Ganja.

- 13) From the evidence of PW-01 it is clear that while making search and seizure proceedings he complied with all the mandatory provisions of the Act. There is nothing in his cross examination which could make his evidence untrustworthy or doubtful. There is no evidence to show that the Investigating Officer was having any enmity with the accused appellant for his false implication. True it is that in this case the independent witness namely PW-02 Ludruram has turned hostile and he partly supported the prosecution case and he admits his signature on all the relevant documents vide Ex. P-8 to P-17 and stated that Ganja was seized from the accused appellant.
- 14) PW-03 Diharan Singh and PW-04 Jageshwar Netam, Head Constables have duly supported the prosecution case and

stated as to the manner the accused appellant was apprehended, after his consent his search was made and Ganja was recovered from the plastic bag which the appellant was carrying. There is no reason to disbelieve the evidence of these witnesses merely because they are police personnel and were involved in the investigation.

- 15) DW-01 Tulsidas in his cross examination states that he heard regarding arrest of the accused appellant. He admits that the police did not threatened the accused appellant of his false implication and that subsequently he (this witness) came to know that the Ganja has been seized from the appellant. DW-02 Madhusudan also admits that the appellant was arrested from Tiraha of the main road by the Police.
- 16) It is well settled principle of law that a Police Officer can or cannot be a sole eye witness 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.
- 17) 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 trustworthy, 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. [**AIR 2013 Supreme Court 3344, Pramod Kumar V. State (GNCT) of Delhi.**]. The same principle of law has been reiterated by the Supreme Court 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 scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

- 18) The Trial Court in the impugned judgment has elaborately dealt with the entire evidence, oral and documentary adduced by the parties and recorded a finding that all the mandatory provisions of the Act have been duly complied with by the Investigating Officer while conducting search and seizure proceedings. From perusal of the evidence of record this Court find no illegality or infirmity in the findings recorded by the Trial Court. Though the independent witness PW-02 Ludruram Kashyap has partly supported the prosecution case, PW-01 Naresh Dubey (S.I.), PW-03 Dilharan Singh (Head Constable) and PW-04 Jageshwar Netam (Head Constable) have duly supported the prosecution case and have proved all the documents relating to secret information Panchnama, search, seizure, weighment, sampling, arrest and information to the higher authorities etc. the defence has not adduced any evidence which could suggest that the Investigating Officer or any Police personnel involved in the investigation was having any ill will or enmity with the accused appellant for his false implication in this case. Therefore, this Court is of the opinion that conviction of the accused appellant

under section 20(b)(1) of NDPS Act is justified and needs no interference by this Court.

- 19) As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place around 20 years back, the age of the appellant at the relevant time is 27 years and at present he must be 47 years, the appellant is young offender having no criminal antecedents, quantity of Ganja i.e. 1.600 Kg, the fact that the appellant has remained in jail for 3 months and 16 days, *keeping in view the judgment of 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 the ends of justice would be served if the appellant is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the trial Court intact.
- 20) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under section 20(b)(1) of NDPS Act, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs. 3,000/- with default stipulation imposed by the Trial Court shall remain intact. Since the appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge