

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 374 of 2002

Order reserved on 06.11.2019

Judgment pronounced on 29.01.2020

Santosh Singh Thakur, S/o Khanjan Singh Thakur, aged about 45 years, Occupation Farmer, R/o Village Khouna Chowk, Silyari, P.S. Dharsimwa, District Raipur (CG) --- **Appellant**

Versus

State of Chhattisgarh through Police Station Aarang, District Raipur (C.G.) --- **Respondent**

For Appellant : Mrs. Kiran Jain, Advocate

For State/Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Facts necessary for disposal of this appeal are that on 07.10.2001 at about 8:25 PM the Station House Officer of Arang Police Station namely Ajeet Patle (PW-6) received a secret information regarding the appellant carrying Ganja from Orissa to Benedih and after entering the same in the Roznamcha Sanha (Ex.P-14) and also intimating the same to the Deputy Superintendent of Police under Ex.P-15 he went to the spot along with his staff members and after waiting for sometime when the accused/appellant came there on his bicycle on which a gunny bag containing Ganja was kept, he stopped him and informed about being in receipt of the secret information regarding Ganja being possessed by him. He also apprised him of his legal rights of being searched by a gazetted officer but he gave the consent of being searched by him only. The police people including PW-6 also gave their personal search to the accused/appellant as per the requirement of law. Due to paucity of time and being in the midst of apprehension regarding the contraband being disposed of otherwise or fleeing away of the accused, PW-6 drew a *Panchnama* for effecting the search without even obtaining a warrant to this effect vide Ex.P-16. Thereafter, from the nearby shop of one Gajadhar Sinha the weighing

instruments were called and on weighing being done the contraband was found to be 6 kg and 500 grams. Subsequently, a notice of search was given to the accused vide Ex.P-3 and while executing the search proceedings, the contraband kept on the bicycle of the accused was recovered, samples of 30 gram each were taken out, the remaining contraband was duly sealed, the samples were sent to the laboratory for chemical examination which as per the examination report (Ex.P-21) was confirmed to be Ganja. Dehati Nalsi (Ex.P-18) was reduced to writing on the spot and after returning to the police station, FIR (Ex.P-20) was registered on the basis of seizure made from the accused/appellant, for the offence under Section 20 of the NDPS Act. After investigation *challan* was filed under the same section followed by framing of charge accordingly.

2. Learned Court below by its judgment dated 18.03.2002 passed in Special Criminal Case No.49/2001 held the accused/appellant guilty under Section 20 (B) (1) read with Section 8 of the NDPS Act and sentenced him to undergo RI for two and half years with fine of Rs.2500, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that the findings recorded by the Court below are contrary to the evidence of the witnesses and therefore, liable to be set aside. She submits that though the independent witnesses to the case of the prosecution namely Ramadhar (PW-2) and Shesh Kumar Sahu (PW-3) have not supported the case of the prosecution yet the Court below has ignored the same and erroneously convicted and sentenced the accused/appellant as described above. According to her, even the legal requirements supposed to be fulfilled for holding the accused guilty, have not been adhered to by the prosecution but the Court below has not considered the same while passing the judgment impugned.

4. State counsel on the other hand, supports the judgment impugned to be strictly in accordance with law and therefore, no alteration therewith is called for in this appeal.

5. Of course the independent witnesses being PW-2 and PW-3 to seizure have not supported the case of the prosecution yet the evidence of Ajeet Patle (PW-6) who acting upon the secret information nabbed the accused/appellant near Sandhari Nala and after complying with the legal requirements such as giving notice of search, drawing Panchnama regarding making search even in the absence of search warrant, intimating the Deputy Superintendent Police about receiving the secret information, ensuring weighment of the contraband, drawing of samples, again sealing the remaining contraband and sending the samples so drawn for chemical examination, clearly establishes the involvement of the accused in possessing in 6.5 KG of contraband which on chemical examination was confirmed to be the Ganja vide Ex.P-21. Though the accused/appellant in his statement recorded under Section 313 of the Code of Criminal Procedure has taken the stand of false implication yet he has not been able to prove by leading legally admissible evidence as to why PW-6 would rope him in a false case. He has not even been in a position to explain as to how the contraband seized from him under Ex.P-9 came to his possession. Apart from this, under the same seizure memo Ex.P-9 the bicycle on which the contraband was being carried by the accused/appellant was also seized. No document authorizing him to possess such contraband has been produced by him and therefore, the only inference which could be drawn against him would be that he was found in illegal possession of Ganja quantified above. Thus the Court below has been fully justified in appreciating the evidence on record while arriving at the conclusion holding the accused/appellant guilty under Section 20 (B) (1) read with Section 8 of the NDPS Act and there appears to be no illegality or infirmity in the well reasoned findings recorded by the

Court below in its judgment under challenge in this appeal. Conviction of the accused/appellant as described above is therefore, maintained.

6. As regards sentence, keeping in mind the facts and circumstances of the case in particular the fact that at the time of incident which took place in the year 2001 the accused/appellant was 45 years of age and by now he must have grown up quite old, that by now he has suffered enough for his felony by facing the long drawn prosecution and that he has already remained behind the bars for about 8 months, this Court thinks it just and proper and also in the interest of justice to reduce the substantive sentence imposed on him to the period already undergone. Order accordingly. The sentence of fine is however left as it is. Being already on bail, the bail bonds furnished by the accused/appellant stand discharged.

7. Appeal thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay