

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 582 of 2002**

Har Prasad S/o Dharam Singh Halba Aged 28 years, R/o Kewtin Tola,
P.S. Kanker, District Kanker(CG)

---Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant	Shri Anand Kumar Gupta, Advocate.
For Respondent/State	Shri Vikas Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

20/02/2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.4.2002 passed by the Special Judge and Additional Sessions Judge, Durg(C.G.) in (NDPS) Special Case No.49 of 2001, whereby the appellant has been convicted under Section 8(c) read with Section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the NDPS Act) and sentenced to undergo R.I. for 1½ years and to pay fine of Rs.2000/-, in default of payment of fine to further undergo S.I. for 3 months.
2. None appeared on behalf of the appellant for arguing this appeal despite repeated calls. In the given facts and circumstances of the case, in particular the long pendency of the appeal, this Court deems it appropriate to appoint a counsel in this case from the empaneled Lawyer of High Court Legal Services Committee for arguing the appeal on behalf of the appellant.

3. Shri Anand Kumar Gupta, Advocate, present in the Court empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court appoints Shri Anand Kumar Gupta, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
4. Brief facts of the case are that on the date of incident i.e. 30.9.2001 at about 11.30 am at village Chitod, Rajiv Sharma (PW4), S.H.O., Police Station, Gurur received information from an informant that one person is carrying Ganja on Rajdoot motorcycle No.MP24Y/5165 kept in the Dicky. The information was reduced into writing vide Ex.P3 and the information was sent to the S.D.O.P. vide Ex.P11. It was also recorded in Rojnamcha Sanha vide Ex.P20A. Thereafter, the S.H.O. along with office staff and witnesses proceeded for search. After reaching to the place of occurrence, the appellant was given notice(Ex.P4) for search under Section 50 of the NDPS Act and he gave his consent (Ex.P4) to search by the Police Officer then vide Ex. P5, search was made by the Police party and vide Ex.P6 Ganja was seized from the Dicky of motorcycle Rajdoot No.MP 24Y/5165 of the appellant kept in two packets. In presence of independent witnesses, the Investigating officer examined the appellant vide Ex.P7. On examination, the seized article was found to be Ganja vide Ex.P8 and weighed 1kg and 040 gm. Two samples of 20-20 gm from each packets were prepared vide Ex.P1 and seal was affixed on it. Thereafter, seizure memo was prepared vide Ex.P9. Dehati Nalishi was prepared vide Ex.P13. Rajiv Sharma (PW4)

brought the appellant to Police Station and lodged FIR vide Ex.P14. The seized property was deposited in the Malkhana. The information of the proceedings was sent to the Judicial Magistrate, Balod vide Ex.P15. Spot map was prepared vide Ex.P16. The accused/appellant was arrested vide Ex. P10. The information was sent to S.D.O.P. vide Ex. P17. The samples were sent to F.S.L. vide Ex.P18. The article was found to be Ganja in the F.S.L. and the report is Ex. P21. After completion of investigation, charge sheet was filed against the accused/appellant under Section 20(b) (1) of the NDPS Act.

5. The Trial Court framed charges against the accused/appellant under Section 8(c) read with Section 20(b)(1) of the NDPS Act. The accused/appellant denied the charges and prayed for trial. After completion of trial, the accused/appellant was convicted and sentenced as mentioned in para 1 of this judgment.
6. So as to hold the accused/appellant guilty, prosecution has examined as many as 6 witnesses namely-Lekhranj(PW1), Baldev Singh Thakur(PW2), Raghunandan Prasad Sharma(PW3), Rajiv Sharma(PW4), Prempratap Mishra (PW5) and Ghanaram Uike(PW6). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him and stated that he has been falsely implicated in the case. In support S.R. Gawde(DW1) was examined by the accused/appellant.
7. Learned counsel for the appellant submits that the mandatory provisions of Section 50, 42 and 57 of the Act have not been complied with and the appellant has been falsely implicated in the case. He submits that the appellant is first offender and was aged

about 28 years on the date of incident; the independent witnesses have not supported the prosecution case and the seized articles were not kept in safe custody, therefore, the appellant has been wrongly convicted and sentenced under the aforementioned Sections of the NDPS Act and he deserves to be acquitted.

8. On the other hand, learned counsel for the State/respondent supported the impugned judgment and submits that the trial Court considering the overall evidence has rightly convicted and sentenced the appellant as aforementioned.
9. Heard learned counsel for the respective parties and perused the material available on record.
10. Rajiv Sharma(PW4) is the S.H.O. of P.S. Gurur. He received secret information from the informant that one person is carrying Ganja in the Dicky of his motorcycle. Then he reduced this information into writing vide Ex.P3 and recorded this information into Rojnamcha Sanha vide Ex.P20 and thereafter proceeded for search vide Ex.P11 along with witnesses Raghunandan and others and the official staff. He also informed his superior authority regarding the information received from the informer. He reached at the place of occurrence where accused/appellant was riding motorcycle. The appellant was stopped by the police party at the place of occurrence as per spot map Ex.P2 and Ex.P16. In compliance of Section 50 of the NDPS Act, Rajiv Sharma (PW4) gave notice to appellant vide Ex.P4 and the appellant consented that he may be searched by Rajiv Sharma (PW4) vide Ex.P5. On search total 1 kg and 040 gm of Ganja was seized from the possession of the appellant, which was kept in the Dicky of his motorcycle in 2 packets containing 240 gm and 800 gm each. Samples of 20-20

gm each were prepared for examination. The appellant was arrested on the same day vide Ex.P10. Dehati Nalishi was recorded vide Ex.P13 and after returning to Police Station, Gurur, FIR Ex. P14 was lodged. Seized articles were kept in safe custody of Police Malkhana and the samples were sent for examination vide Ex.P18 to the FSL, Raipur. In test the article was found to be Ganja, the FSL report is Ex.P20.

11. Perused the evidence of Rajiv Sharma (PW4). His evidence is also corroborated by the evidence of Ghanaram Uike (PW6) and partially supported by Raghunandan Sharma (PW3). Both have admitted their signatures on Ex.P3 and Ex.P10. Lekhraj (PW1) also supported the case of prosecution regarding weighing the seized article. Baldevsingh Thakur (PW2) is Patwari and he prepared spot map Ex.P2. There is no reason to disbelieve the evidence of these witnesses. Rojnamcha Sanha Ex.P20 A, P21-A, P22 and P23 have also proved by Head Constable- Prempratap Mishra (PW5). He proved this fact that the seized article was kept in Malkhana and thereafter, it was sent for examination.

12. Admittedly, there is nothing on record to show that the appellant has been falsely implicated this case. Rajiv Sharma (PW4) in compliance of Sections 41, 42 and 50 and other proviso of the NDPS Act has sent the information regarding his search to superior authority vide Ex.P11. One copy of FIR was also sent to the concerned Magistrate vide Ex.P15. Vide Ex.P17 on the same day Ganja was seized from the possession of the appellant. Rajiv Sharma (PW4) has strictly complied the provisions of the NDPS Act. Therefore, the entire evidence shows that the appellant was rightly convicted and sentenced by the trial Court for the offence

under Section 20(b) (1) of the NDPS Act.

13. S.R.Gawde (DW1) is owner of the vehicle and he has stated that he had gone to village Gurur to meet his relative and while returning, the Police officer of P.S. Gurur stopped and asked him for documents of the motorcycle, but he was not holding the documents then the Police took his motorcycle to Police Station. Next day he went to the Police Station with the documents of the motorcycle, but Police has not released his vehicle and the police has seized his motorcycle wrongly. In view of the statements of independent witnesses and the Investigating Officer, the evidence of this defence witness does not inspire confidence of the Court.

14. 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.

15. 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.]**

16. The appellant was aged about 28 years of age on the date of incident i.e. 30.9.2001 and more than 19 years have elapsed and he has not committed any further offence, therefore, no fruitful purpose would serve if he is again sent to jail after such a long period of 19 years. Since the appellant has already remained in jail for above 9 months during trial and after conviction and considering the age of the appellant at present i.e. 48 years, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him in the interest of justice while keeping the fine amount intact.

17. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 8(c) read with Section 20(b)(1) of the NDPS Act, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs.2000/- shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437A of Cr.PC.

Sd/
(Gautam Chourdiya)
Judge