

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 684 of 2007**Judgment reserved on 21.09.2020Judgment pronounced on 04.12.2020

Raja Naykar, S/o. Ganesh Naykar, Aged about 27 years,
Occupation – Labour, R/o Purana Bus Stand Power House, Bhilai,
Bairagi Mohalla, P.S. Chhavni, District- Durg, Chhattisgarh

---Appellant**Versus**

The State of Chhattisgarh, Through – P.S. Chhavni, District – Durg,
Chhattisgarh

---Respondent

For Appellant	:	Mr. C.K. Nawrang and Mr. Basant Dewangan, (Legal Aid) Advocates.
For Respondent	:	Mr. Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor**CAV Judgment**

On 05.06.2004 at about 10.00 AM when Sub-Inspector M.K. Dhruw (PW-9) along with other constables was on patrolling duty, he received a secret information to the effect that the accused-appellant herein along with his brother-in-law Nutta was selling *Ganja* near a canal in contravention of the legal provisions. After reducing the secret information to writing he forwarded the same to City Superintendent of Police, Chhavni through constable No.369 namely Rohit, which was received by his reader as at the relevant time concerned City Superintendent of Police was not present in his office. Two persons namely Javed Khan (PW-5) and Naseer Ahmad

(not examined) were called by PW-9. Subsequently, they all went to the spot, but on seeing the police party the accused-appellant tried to run away carrying the bag which he was keeping with him. The appellant was however apprehended by laying a siege. PW-9, thereafter, apprised the accused-appellant of the secret information received by him and also gave him a notice under Section 50 of the Narcotic Drugs & Psychotropic Substances Act (for brevity the "NDPS Act") vide Ex-P/11. The appellant was also informed about his right to give search either to the Gazetted Officer or to the Magistrate or to PW-9 himself vide Ex-P/12. On this being done, the accused-appellant gave his consent for being examined by the PW-9 himself. Sub-inspector and other constables first gave their own search, but nothing objectionable was found in their possession, which is evident from Ex-P/13. Thereafter, the appellant was also searched in presence of witnesses. During search, some Ganja like substance was found in the bag carried by the accused-appellant vide Ex-P/15; weighing instruments were called by the constable No.347 and on weighment being done 2.500 grams of contraband being found in his possession, which is evident from Ex-P/16. There upon, two samples of 50 grams each were taken out for sampling, they were properly sealed and the seizure of the contraband was effected under Ex-P/18 followed by arrest of the accused under Ex-P/19. Accused-appellant along with the contraband so seized was brought to the police station where FIR (Ex-P/21) was registered against him for the offence under Section 20(B) of the NDPS Act. Contraband was kept in safe custody, the samples were sealed and

sent to Forensic Science Laboratory for chemical examination vide report Ex-P/6. As per the report of the Chemical Examiner, the contraband was confirmed to be *Ganja*, and after completion of investigation charge-sheet under the said Section was laid against the accused-appellant.

2. After going through the evidence adduced by the prosecution learned Court below found the accused-appellant guilty under Section 20(B) of the NDPS Act and sentence him to undergo R.I. for two years with fine of Rs.3,000/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused-appellant submits that though as many as 10 witnesses have been examined by the prosecution yet some of them who were material to the case in hand have been given up for the reasons best known to it. He further submits that the findings recorded by the Court below are not based on the evidence given by the independent witnesses and the conviction rests merely on the testimony of the police people who happen to be the interested witnesses to the case of the prosecution. He further submits that from the evidence of M.K. Dhruw (PW-9), it is evident that the house in question where the accused-appellant resided was occupied by his mother, sister and brother-in-law, and therefore, it cannot be said that the contraband was in the exclusive possession of the accused-appellant. According to the counsel for the appellant, two persons were called by PW-9 for conducting the prosecution but out of them only Javed Khan has been examined by

the prosecution and the other one namely Naseer Ahmad has been left out, which also creates doubt in the case of the prosecution.

4. State counsel however supports the judgment impugned and submits that the material available on record clearly indicates that on the tip off received by M.K. Dhruw (PW-9) 2.500 grams contraband was seized from the possession of the accused-appellant, which on chemical examination was also confirmed to be the *Ganja*, and therefore, there is no scope for taking a lenient view in favour of the accused-appellant particularly when there is ample evidence to show that the contraband was seized from the possession of the accused-appellant and that too after seeing the police party he tried to ran away by carrying the bag containing *Ganja* in it. Kunwar Singh (PW-1) is the witness who at that relevant time was posted as reader in the office of City Superintendent of Police and received information from the concerned police station under Ex-P/1 has stated to that effect and supported the case of the prosecution. Shivbodhan Yadav (PW-8) though a police constable has categorically stated that he did not see the accused-appellant selling *Ganja*. This witness has also expressed his inability to state as to who were the independent witnesses to the case of the prosecution at the relevant time. He has stated that as the version of the people residing within a radius of 1000 meter may not stand true on the touchstone of the legal and procedural formalities, the independent witnesses beyond that parameter were called so that the truth could have come out from their mouth. However, the fact remains that according to this witness the accused-appellant was

not found selling the contraband in question. Though M.K. Dhruw (PW-9) has conducted the entire investigation culminating in filing of the charge-sheet, yet he has stated that the house in question where the accused-appellant resided was in occupation of other inmates being his mother, sister and brother-in-law. This leads to an irresistible conclusion that the accused-appellant was not in the exclusive possession of the said contraband because the possibility of others being involved in the said transaction cannot be ruled out. Another important aspect of the matter is that the person who brought the weighing instrument and weighed the contraband by name Peer S/o Sultan has not been examined by the prosecution to disclose the actual quantity of the said contraband. Likewise, Naseer Ahmad who was called by the PW-9 has also not been examined by the prosecution and the other one being Javed Khan @ Guddu (PW-5) has not supported the case of the prosecution, rather he has categorically stated that no cannabis was seized from the accused-appellant in his presence nor did he see him involved in sale thereof. Thus, the material collected by the prosecution does not give any cogent clue on the basis of which the accused-appellant can be said to be in illegal possession of illicit Ganja. In this view of the matter, the conviction of the accused-appellant under Section 20(B) of the NDPS Act being off the record cannot be allowed to stand.

5. The conclusion is that the appeal is allowed, the judgment impugned is set aside as a whole resulting in acquittal of the accused-appellant of the charge levelled against him. Since in this

case, he is already enjoying bail, there is no need of making a mention regarding his release etc.

6. Accordingly, the appeal is hereby allowed.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/yasmin