

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 456 of 2003**

- Lal Chand, Son of Mehtaru Gond, aged about 20 years, Occupation Service in hotel, R/o Kurud, Tahsil and District Dhamtari, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through P.S. Nagamar, District Jagdalpur

---- Respondent

For Appellant	Shri Santosh Bharat, Advocate.
For Respondent/State	Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****04/02/2020**

1. In this appeal filed under Section 374(2) of CrPC, the appellant challenges the legality, validity and propriety of the judgment of conviction and order of sentence dated 27.02.2003 passed by Special Judge, NDPS Act, Bastar place Jagdalpur in Special Case No.56/2002 whereby the appellant stands convicted under Section 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo R.I. for three years and six months and pay a fine of Rs.12,000/-, in default of payment of fine amount additional R.I. for nine months.
2. Facts of the case in brief are that on 27.10.2002, PW-5 Alim Khan, SI posted in Police Station, Nagarnar, received a secret information that appellant is standing on the bridge of Gulijodi with Ganja. The said information was reduced to writing vide Ex.P-1 (panchnama).

The police party along with witnesses went to the spot, apprehended the accused, gave him notice vide Ex.P-2 under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police vide Ex-2. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-3. On search of the accused Lalchand, Ganja like substance was recovered vide Ex.P-4 and on being examined by smelling, burning and tasting, it was found to be Ganja. On weightment being done of the contraband, it was found to be 5Kg 800 gms vide Ex.P-6. Two samples, each of 30 gms, were drawn from the said contraband vide Ex.P-8. The samples were duly sealed and panchnama of specimen of seal was prepared vide Ex.P-7. Spot map was prepared vide Ex.14. Rs.150/- was also seized from the accused vide Ex.P-8. The accused was arrested vide Ex.9. FIR Ex.P-17 was registered against the appellant under Section 20(b) of the NDPS Act. Intimation of the entire proceedings was forwarded to Higher Authorities Exs. P-18 & P-19 The remaining contraband was deposited in Malkhana. Samples were sent to FSL for chemical examination vide Ex.P-22. As per the report of FSL Raipur, the seized contraband was confirmed to be Ganja Ex.P-24. After investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The trial Court framed charge under Section 20(b)(ii)B of the NDPS Act against him. The accused/appellant denied the charges and prayed for trial.

3. So as to hold the accused/appellant guilty, the prosecution examined 5 witnesses i.e. PW-1 Butiram, PW-2 Pratap, PW-3

Padam Rajaiya, PW-4 Jankush Toppo & PW-5 Alim Khan. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment.
5. Learned counsel for the appellant submits that though in this case PW-1 Butiram and PW-2 Pratap in their examination-in-chief supported the prosecution case but in their cross-examination both have denied the entire prosecution case and they have not supported the prosecution case. Therefore, in this case no independent witness has supported the prosecution case. He also submits that only on the basis of evidence of PW-3 Padam Rajaiya and PW-4 Jankush Toppo, Police Personnel, appellant has been falsely implicated in this case. He further submits that there is total non-compliance of all the mandatory provisions of the NDPS Act and only on the basis of interested witnesses, trial Court has wrongly convicted the appellant.
6. On the other hand, learned counsel for the State supporting the impugned judgment submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant which warrants no interference by this Court.

7. Heard learned counsel for the respective parties and perused the material available on record.
8. PW-5 Alim Khan, S.I. P.S. Nagarnar, has proved this fact that upon receiving a secret information that appellant is standing on the bridge of Gulijodi with Ganja, the said information was reduced to writing vide Ex.P-1 (panchnama). The police party along with witnesses went to the spot, apprehended the accused, gave him notice vide Ex.P-2 under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police vide Ex.P-2. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-3. He states that upon search of the accused Lalchand, Ganja like substance was recovered vide Ex.P-4 and on being examined by smelling, burning and tasting, it was found to be Ganja. On weightment being done of the contraband, it was found to be 5Kg 800 gms vide Ex.P-6. Two samples, each of 30 gms, were drawn from the said contraband vide Ex.P-8. The samples were duly sealed and panchnama of specimen of seal was prepared vide Ex.P-7. Spot map was prepared vide Ex.14. Rs.150/- was also seized from the accused vide Ex.P-8. The accused was arrested vide Ex.9. He states that FIR Ex.P-17 was registered against the appellant under Section 20(b) of the NDPS Act and intimation of the entire proceedings was forwarded to Higher Authorities Exs. P-18 & P-19. The remaining contraband was deposited in Malkhana. Samples were sent to FSL for chemical examination vide Ex.P-22. AS per the report of FSL Raipur, the seized contraband was confirmed to be Ganja Ex.P-24. He states that in presence of PW-1 Butiram and

PW-2 Pratap, independent witnesses entire procedure of search was made by him.

9. PW-1 Butiram has also supported the evidence of PW-5 Alim Khan on material particulars. He states that in his presence Ganja was seized from the bag of the appellant and he was arrested and Rs.150/- was also seized from the appellant. He admits that in his presence two samples, each of 30 gms, were drawn from the said contraband and sealed by the police officer. He admits his signature over the documents of Ex.P-1 to P-9. True it is that in the cross-examination this witness has not fully supported the prosecution case, however, his whole testimony cannot be discarded merely on the ground of he being declared hostile and it can be considered to the extent his evidence finds due support from the other oral and documentary evidence available on record.

10. PW-2 Pratap also admits his signature over the documents of Ex.P-1 to Ex.P-9 and states that near Gulijodi bridge accused was caught by the Police and Ganja like substance was seized from the accused. Thereafter, documents Ex.P-1 to P-9 were prepared by the Police Officer.

11. PW-3 Padam Rajaiya, Head Constable, who is the member of the search party also supported the evidence of PW-1 Butiram and PW-2 Pratap. There is no reason to disbelieve their evidence.

12. In the present case, independent witnesses PW-1 Butiram, PW-2 Pratap & police personnel i.e. PW-3 Padam Rajaiya and PW-5 Alim have fully supported the prosecution case. It cannot be stated as a

rule of law that a police officer can or cannot be a reliable 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.

13. 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 weights over the quantity of evidence. [**Pramod Kumar vs. State (GNCT) of Delhi** reported in **AIR 2013 Supreme court 3344**].

14. In the present case, independent witnesses (PW-1 Butiram, PW-2 Pratap and IO PW-5 Alim Khan) have duly supported the prosecution case on material particulars. The defence has not been

able to bring on record any material on the basis of which it can be said that the accused has been falsely implicated in the offence. The evidence of independent witnesses i.e. PW-1 Butiram and PW-2 Pratap as also the IO PW-5 Alim Khan appears to be trustworthy and duly supported by the documents produced by the prosecution. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

15. Thus, keeping in mind the principles of law laid down by the Supreme Court, referred to above and on close scrutiny of the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding the appellant guilty under Sections 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, cannot be faulted with and the same are hereby affirmed.

16. Resultantly, the appeal being without any substance is liable to be and is, accordingly, dismissed.

17. As per report dated 30.01.2020 of Deputy Jail Superintendent, Central Jail Jagdalpur which has been obtained through E-mail and is taken on record, the appellant has been released from jail on 27.01.2007 after serving out the entire sentence imposed upon him. Therefore, there is no need to pass any further order.

Sd/-
Gautam Chourdiya
Judge

