

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.580 of 2003**

1. Shankar Lal S/o Sukhdeo, aged about 33 years, Agriculturist, R/o Village Pasangi, Police Station Farasgaon, District Bastar (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Farasgaon, District Bastar (C.G.)

---- Respondent

For Appellant	:	Miss Pragya Pandey, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****20/02/2020**

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 07/04/2003 passed by Special Judge, (N.D.P.S. Act) Bastar, Place Jagdalpur in Special Case No. 55/2002; whereby the appellant Shankar Lal stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act")	R.I. for 2 years & fine of Rs. 5,000/- in default of fine additional R.I. for 6 months.

- 2) Case of the prosecution in brief is that on 30/10/2002 Sub Inspector A. Nuruti of Police Station Farasgaon, District Bastar received a secret information that one person is coming from Orissa on Hero Honda Motorcycle with Ganja to village Pasangi where the accused Shankar Lal will collect Ganja and is waiting with his Luna Moped at the place Barkai Nala. After recording the said information in the Rojnamchasanha as per Ex.14C,

Panchnama Ex. P-1 was prepared in presence of witnesses and thereafter he proceeded for search of the appellant. PW-05 A. Nuruti, Sub Inspector alongwith Police staff & witnesses went at the place Bakai Nala where appellant was found there. The said departure was recorded by PW-5 in the Rojnamchasanha. Notice (Ex. P-2) under Section 50 of the NDPS Act was given to the accused before search of his Bag that he may get the search through Gazetted Officer or the Magistrate or by him (A. Nuruti S.I.). The accused consented for search by the Police vide Ex. P-4. Thereafter, PW-05 A. Nuruti (S.I.), gave search of himself and the Police Staff to the accused by Ex. P-3. After search of the Bag of the accused, 2 KG 700 Gram Ganja was recovered in bag. Identification Memo of the Ganja was prepared vide Ex. P-5. Out of the said Ganja 2 samples of 50-50 grams were drawn and sealed. The seized Contraband was deposited in Malkhana by A. Nuruti (S.I.) and acknowledgement was obtained vide Ex. P-13C. Spot map was prepared as per Ex. P-17. The accused was arrested vide Ex. P-9, intimation of his arrest was sent to his father Sukhdeo vide Ex. P-18. FIR Ex. P-20 was registered under Crime No. 133/2002 and the information regarding the entire proceedings was forwarded to the S.P. Bastar, S.D.O.P Kondagaon and A.S.P., Narayanpur as per Ex. P-21, the samples of articles were sent for Chemical Examination to FSL Raipur vide Ex. P-23 from where report Ex. P-24 was received confirming the Contraband to be Ganja. After completion of investigation charge sheet was filed against the accused/appellant under Section 20(b) of NDPS, Act.

- 3) The Trial Court framed charge against the accused/appellant under Section 20(b)(ii)(B) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 4) The prosecution in support of its case examined as many as 05 witnesses namely PW-01 Surendra Kumar, PW-02 Sangram, PW-03 Lochan Kumar Pandey, PW-04 Labharam Dhruv (Head Constable/Malkhana Mohrir) and PW-05 A. Nurai (S.I.). 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. No witness was examined by the accused in his defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that there is total non-compliance of mandatory provisions of Sections 42 & 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.
- 7) Learned counsel for the appellant further submits that as per Ex. P-13 there is approximate 2.7 KG Ganja but as mentioned in seizure memo there is 2.5 Kg Ganja. Therefore, there appears to be manipulation in the quantity of the contraband by Police and further, the seized articles were not kept in safe custody. Therefore, conviction of the appellant under Section 20(b)(ii)(B) of NDPS Act is not in accordance with law.
- 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 NDPS 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) It is also not disputed by the respondent/State counsel that both the independent witnesses PW-01 Surendra Kumar and PW-02 Sangram have turned hostile and not supported the prosecution at any stage of examination but both have admitted their signature on documents Ex. P-1 to Ex. P-10 prepared by the Investigating Officer.
- 12) The conviction is based mainly on the evidence of PW-04 and PW-05. PW-04 Labhram Dhruv (Head Constable/Malkhana Mohrir) proved Ex. P-13C that he received sealed packet as mentioned on Ex. P-13C.
- 13) PW-03 Lochan Kumar Pandey, the witness of weighment Panchnama Ex. P-6 stated that the Ganja was seized from another person namely Bhagwan Lal which weighed 7 Kg 300 grams. But looking to the document of Ex.P-6, the same was prepared by the I.O. wherein the quantity of Ganja seized from the appellant is mentioned as 2 KG 700 grams. In view of the statement of PW-5 and PW-04 Labharam Dhruv as also the document of Ex.P/13C and the FSL report Ex. P-23 and Ex. P-24, it is proved that 2.700 kg of Ganaj was seized from the appellant by the I.O.
- 14) As per PW-05 A. Nuruti (I.O.) when he received secret information from informer that accused has kept Ganja in his Bag as per Ex. P-1 he recorded the same in the Rojnamchasanha Ex. P-14C and thereafter he went for search of appellant alongwith his staff and 2 independent witnesses. Thereafter, immediately he reached along with his staff and witnesses to appellant and as per Ex. P-2 notice was given to

the accused for search and after obtaining consent of accused search of his cotton Bag was made vide Ex. P-4, Ganja was recovered as per Ex. P-6. After weighment being done, it was found to be 2 KG 700 Gram and out of which 2 samples were drawn and marked as Articles A1 and A2. As per Ex. P-7 the articles were sealed and specimen seal Panchnama was prepared.

- 15) As per Ex. P-8 the seizure memo is prepared and the accused was arrested as per Ex. P-9. The article was sent for keeping in safe custody by Police as per Malkhana Register Ex. P-13C. FIR was lodged as per Ex. P-20 and article was sent for FSL examination vide Ex. P-23. As per Ex. P-24 FSL report the article so sent was found Ganja. Proviso of Section 50 is strictly followed by the Police.
- 16) Definitely the independent witnesses (PW-1 and PW-2) of village have turned hostile and not supported the prosecution case but they admitted their signature on document Ex. P-1 to Ex. P-9. Looking to the evidence of PW-05 A. Nuruti (I.O.) there is no reason to disbelieve this Investigating Officer. The defence counsel has not brought on record anything to show that the Investigating Officer was having any ill will or enmity with the accused/ appellant for his false implication in this case. During cross-examination of the witnesses also no such suggestion has been put to them that the Investigating Officer was inimical to the accused/appellant.
- 17) 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.

- 18) 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. [***Pramod Kumar V. State (GNCT) of Delhi, AIR 2013 Supreme Court 3344.***]. 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.”

- 19) The Trial Court has discussed in detail about the compliance of the mandatory provisions by the Investigating Officer from Paras 12 to 24 of the impugned judgment. Thus considering the oral and documentary evidence on record and the seizure of contraband from the possession of the accused /appellant which was subsequently found to be Ganja as per FSL report vide Ex.

P-24, this Court is of the opinion that the Trial Court was fully justified in convicting the appellant under Section 20(b)(ii)(B) of NDPS Act. The investigating officer has duly complied with the provisions of Sections 42 & 50 of the NDPS Act while conducting search and seizure proceedings. This Court finds no substance in this appeal.

- 20) Since the appellant has already remained in jail for 8 months and 6 days, considering the facts and circumstances of the case, the age of the appellant at the relevant time i.e. 33 years and at present he must be 51 years, the incident occurred around 18 years back, this court is of the pinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine amount with default stipulation as imposed by the Trial Court intact.
- 21) In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act, his jail sentence is reduced to the period already undergone by him. However, the fine amount of Rs. 5,000/- with default stipulation imposed by the Trial Court shall remain intact. Since the appellant is reported to be on bail, his bail bond shall remain in force for a period of six months from today in view of the provision of Section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge