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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 863 of 2003**

1. Pushpawati W/o Shri Adinarayan, aged about 31 years, Occupation – Labour, R/o Village Kalimela Rautpara, District Koraput (Orissa).

---- Appellant**Versus**

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

---- Respondent

For Appellant	:	Shri Sudhir Kumar Bajpai with Shri Anupam Bajpai, Advocates.
For Respondent/State	:	Shri Vikas Shrivastava, Panel Lawyer

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****13/02/2020**

- 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 03/04/2003 passed by Special Judge, (N.D.P.S. Act) Bastar, Place Jagdalpur in Special Case No. 42/2002; whereby the appellant Pushpawati 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 22/09/2002 Sub Inspector Alim Khan of Police Station Nagarnar, District Bastar received a secret information that one lady (accused) carrying Ganja in bag at National Highway No. 43 near Bhaganpur Chowk is waiting for vehicle. After recording the said information in the Rojnamchasanha Ex. P-2, Panchnama Ex. P-3 was prepared in presence of witnesses and thereafter he proceeded

for search of the appellant. Sub Inspector Alim Khan alongwith Police staff and 2 witnesses went to spot where she was waiting for vehicle after recording the departure in the Rojnamchasanha to this effect. Notice (Ex. P-6) under Section 50 of the NDPS Act was given to the accused before her search that she may get the search through Gazetted Officer or the Magistrate or by any other Police Officer. The accused consented for search by the Police vide Ex. P-7. Thereafter, Police, gave search of himself and the Police Staff by the accused vide Ex. P-8. After search of the accused, 3.5 KG Ganja was recovered in bag. Identification Memo of the Ganja was prepared vide Ex. P-9. Weighing Panchnama was prepared vide Ex. P-1. Out of the said Ganja 2 samples of 30-30 grams were drawn and sealed and seizure memo Ex. P-11 was prepared. The seized Contraband was deposited in Malkhana by Alim Khan and acknowledgement was obtained vide Ex. P-26C. Spot map was prepared as per Ex. P-12. The accused was arrested vide Ex. P-13, intimation of her arrest was sent to her husband. Dehati Nalishi Ex. P-14 was prepared on the spot. FIR Ex. P-16 was registered under Crime No. 126/2002 and the information regarding the entire proceedings was forwarded to the S.P. and A.S.P. Jagdalpur, the samples were sent for Chemical Examination to FSL Raipur vide Ex. P-22 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 Padam Rajaiya (Head Constable), PW-02 Alim Khan (S.I.), PW-03 Jaima Bai (Peon.), PW-04 Panchuram Kasi (Head Constable) and PW-05 Butiram. The statement of the accused was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing

against her in the prosecution case and pleaded innocence and false implication. No Defence witness was examined by the accused in her 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, 52 & 57 of NDPS Act. There is no independent witness who supported the prosecution case. The prosecution has failed to prove offence against the appellant, therefore, appeal may be allowed. Only on the basis of evidence of the Investigating Officer and other Police staff who were interested in the case, conviction of the accused cannot be sustained.
- 7) 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 followed by the Investigating Officer as mentioned in NDPS Act. 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.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) 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.
- 10) It is also not disputed by the respondent/State counsel that PW-03 Jaima Bai turned hostile and not supported the prosecution at any stage of examination.

- 11) The conviction is based on the evidence of PW-01 Padam Rajaiya (Head Constable), PW-02 Alim Khan (S.I.), PW-04 Panchuram Kasi (Head Constable) and PW-05 Butiram.
- 12) As per PW-02 Alim Khan (I.O.) when he received secret information from informer as per Ex. P-2(C) he recorded the same in the Rojnamchasanha and Ex. P-3 thereafter he went for search of appellant alongwith his staff and independent witnesses. Thereafter, immediately he reached along with his staff and witnesses to appellant where she was waiting for vehicle and as per Ex. P-4 notice was given to the accused for search and after obtaining consent of accused Pushpawati search of her bag was made vide Ex. P-6 and approximate 3.5 KG Ganja was recovered as per Ex. P-8. As per Ex. P-7 search memo is prepared, therefore, the seized article was brought to Police Station and as per Ex. P-1 at Police Station in presence of the accused and independent witnesses, Ganja was weighed and found to be 3.5 KG out of which 2 samples were drawn and marked as Articles A1 and A2. As per Ex. P-9 the article was sealed and specimen seal Panchnama was prepared.
- 13) As per Ex. P-11 the seizure memo is prepared and the accused was arrested as per Ex. P-13. The article was sent for keeping in safe custody of Police as per copy of Malkhana Register Ex. P-26C. FIR was lodged as per Ex. P-16 and article was sent for FSL examination vide Ex. P-22. As per Ex. P-24 FSL report sent article was found Ganja. The contraband was seized from the Bag of the appellant after giving her notice under Section 50 of NDPS Act by the I.O. as per Ex. P-1 and obtaining her consent as per Ex. P-4.
- 14) PW-01 Padam Rajaiya (Head Constable) is also proving the same fact in his statement that Ex. P-1 was prepared in presence of these witnesses.
- 15) PW-05 Butiram stated that Ganja was seized from accused by the Police Officer and Ex. P-1 to Ex. P-13 were prepared in his presence and admitted his signature over said document but in

cross examination he has not identified the appellant.

- 16) PW-04 also proved this fact that the seized article was kept in safe custody as per Ex. P-26C. Therefore, the compliance of section 50 and other provisions of NDPS Act is strictly made by the prosecution and proved beyond all reasonable doubt.
- 17) Definitely PW-03 Jaima Bai has turned hostile and not supported the prosecution case. Looking to the evidence of PW-02 Alim Khan (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 her 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.
- 18) 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.
- 19) 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.]** 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** 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.”

- 20) The Trial Court has discussed in detail about the compliance of the mandatory provisions by the Investigating Officer from Paras 28 to 36 of the impugned judgment. Thus considering the oral and documentary evidence on record the seizure of Contraband Ganja 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.
- 21) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per report dated 08/02/2020 submitted by Assistant Jail Superintendent, Central Jail, Jagdalpur, the appellant having completed the jail sentence of 2 years has been released from jail on 21/03/2005. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge