

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 859 of 2003**

- Sachin Mandawi S/o Subhash Mandawi, aged about 23 years, occupation labourer, resident of behind Adwani School Birgaon, P.S. Urla District- Raipur (C.G.).

----Appellant**Versus**

- State of Chhattisgarh, through the District Magistrate Durg (C.G.).

---- Respondent

For Appellant : Shri Shailendra Dubey, Advocate.
For Respondent/State : Shri Gagan Tiwari, G. A.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****14.07.2020**

- (1) The matter is heard through Video Conferencing.
- (2). This appeal arises out of the judgment of conviction and order of sentence dated 19.05.2003 passed by the Special Judge & Additional Sessions Judge, (N.D.P.S. Act), Durg in Special Criminal Case No. 26/2002, convicting the accused/appellant for the offence punishable under Section 8

(c) read with Section 20 (b) (ii-B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentencing him to undergo rigorous imprisonment for 2 years with fine of Rs. 5,000/-, in default of payment of fine to further undergo rigorous imprisonment of one year.

(3) Case of the prosecution, in brief, is that 13.12.2002, at about 15.00 hours Rajeev Sharma (PW02), In-charge Police Station, Gurur received an information from informant that accused- Sachin Mandawi was having contraband (*ganja*), in the house of the one person namely- Sankar Goriya at village- Kaneri. All the mandatory provisions contained in the NDPS Act have duly been complied with by the Investigating Officer while making seizure of alleged Ganja, such as, personal search of the police party and the witnesses was also made by the appellant and then consent for his search was given by the appellant. After search & recovery of the 1kg, 800grams contraband (*Ganja*), the appellant was arrested for the offence under Section 20 (b) of the NDPS Act.

(4). After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The Special Judge (the NDPS Act) framed charges against the accused/appellant under Section 20(b)(ii-B) of the

Narcotic Drugs and Psychotropic Substances Act, 1985. Accused/appellant denied the charges levelled against him and prayed for trial.

(5). So as to hold the accused/appellant guilty, the prosecution examined 5 witnesses namely- Gareebdas (PW-1), Rajeev Sharma (PW-2), B. R. Gupta (PW-3), Fekuram (PW-4) and Kamaldas (PW-5). 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, pleaded innocence and false implication. However, no defence witness has been examined on behalf of the accused/appellant.

(6). 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 paragraph 2 of this judgment.

(7). Learned counsel appearing for the accused/appellant submits that mandatory provisions under Sections 41, 42, 50, 55 & 57 of the NDPS Act have not been complied by the Investigating Officer while making search & seizure of the alleged contraband (*Ganja*). He further submits that in the instant case, independent witness namely Kamaldas (PW05), kotwar of the village Kaneri has not fully supported the case of

the prosecution stating that he has no knowledge about the search of the appellant/accused he only made his signature on all the relevant documents such as Exs. No. P/5 to P/7. Therefore, the learned Special Judge has erred in convicting and sentencing the accused/appellant as aforementioned.

(8) Learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions contained in Sections 41, 42, 50, 55 & 57 of the NDPS Act have been duly complied with by the Investigating Officer while making search and seizure of Ganja, such as, notice under Section 50 of the NDPS Act was given to the appellant, thereafter, personal search of the police party and the witnesses was also made by the appellant and then after receiving of consent by the appellant search & seizure was completed, therefore, the appellant has rightly been convicted & sentenced by the Trial Court, which does not call for any interference in the instant appeal.

(9) I have heard learned counsel appearing for the parties and perused the record of the trial Court including impugned judgment.

(10) Rajeev Sharma (PW02), In-charge Police Station, Gurur received information from an informant that accused- Sachin Mandawi was having contraband (*Ganja*), in the house of the

one person namely- Sankar Goriya at village- Kaneri. The said information was reduced into writing vide Ex.P/01 which has been duly proved by him (Rajeev Sharma-PW02) & Gareebdas (PW01), Kotwar and, also recorded in Rojnamchasana vide Ex. P/17-A and forwarded to the Superior Officer through Radio Msg vide Ex.P-03. The police party went to the spot, apprehended the accused, in presence of witnesses namely- Kamaldas (PW 05) and Ashok Sahu gave him notice 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 and nothing was found. On search of the appellant, in the musical instrument (Dholak) Ganja like substance wrapped in a paper was recovered and on being examined by smelling, it was found to be Ganja vide Ex.P-05 & P-06. On weighment being done of the contraband it was found to be 01 kg 800 gm. Two packets of contraband (Ganja) containing 20 gms, were drawn from the said contraband and seizure memo (Ex.P-08) was prepared, the samples were duly sealed and kept in Malkhana. Dehati Nalisi Ex. P/9 & Spot map Ex. P.10 were also prepared, the accused was arrested vide Ex.P-11, Intimation of the entire proceedings was forwarded

to the office of Superintendent of Police, Durg (C.G.) and samples were sent for chemical examination to FSL through Superintendent of Police vide Ex. P/16. After reaching police station, FIR (Ex-P/12) was registered against the appellant under Section 20(B) of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 31.12.2002 with intact seal and report of FSL is Ex.P-22 & Ex. P-23, which confirms the seized contraband to the Ganja.

(11) B. R. Gupta (PW03), Assistant sub-Inspector, has supported & corroborated with the statement of Rajeev Sharma (PW02). He stated in paragraph two of his statement that he was present at the time of investigation and sent the information of the incident to SDOP, Balod vide Ex. P/15, recorded statement of the witnesses and samples were sent for chemical examination to FSL through Superintendent of Police vide Ex. P/16.

(12) Fekuram (PW04), **Moharrir** is also supported the statement of Rajeev Sharma (PW02), In-charge Police Station, Gurur stating that in his presence the information received regarding carrying *Ganja* by the appellant. He also proved all the relevant document such as Exs. P/17 to P/21.

(13) Kamaldas (PW05), independent witness has stated that

he made his signature on all the relevant documents such as Exs. No. P-5 to P-7 and they are prepared in his presence.

(14) Looking to the evidence of prosecution witnesses who are the Police Official namely- Rajeev Sharma (PW02), B. R. Gupta (PW03) and Fekuram (PW04) in particular, the statement of investigating Officer- Rajeev Sharma (PW02), In-charge Police Station Gurur, it is apparent that the procedure prescribed under the NDPS Act had duly been followed by the Investigating Officer while making search & seizure of the contraband *Ganja* and there is no reason to disbelieve the statements of Investigating Officer and other police officials. The evidence of the Police Official has also partly supported by the independent witnesses.

(15) 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 is 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.

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 trust worthy, 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 reported in **AIR 2013 Supreme Court 3344**]. The same principle of law has been reiterated by the Supreme Court Judgment 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 scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

(16) In the present case, though the independent witness-Kamaldas (PW05) has not fully supported the prosecution case but he admits his signature on documents i.e. P/05 to P/07. The police personnel have unequivocally stated about search and seizure of the contraband. As per evidence available on record, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witness. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

(17) Thus, regard being had to 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 him guilty under Section 20 (b) (ii-B) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

(18) Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed. Vide letter dated 24.06.2020 received from the Central Jail, Durg, it is reported that the appellant has been released from jail after completion of jail sentence & fine awarded to him, therefore, there is no need to pass any order with regard to his surrender.

Sd/-

(Gautam Chourdiya)
Judge

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