

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 935 of 2003

Ranjeet Barai, S/o Shri Surendra Barai, Aged about 35 years, Occupation Agriculture, R/o Village Kalimela, M.V. - 77, P.S. Kalimela, M.V. - 79, District – Malkangiri, Orissa

---- Appellant

Versus

State of Chhattisgarh through Police Station Bodhghat, District Bastar, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Alok Dewangan, Advocate
For Respondent	:	Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

01.07.2020

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.07.2003 passed by Special Judge, Jagdalpur under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), Durg, CG. in Special Criminal Case No. 57/2002 whereby the learned Special Judge after holding the accused/appellant guilty for being in illicit possession of 2 kilograms of contraband *Ganja*, convicted him under Section 20 (b), II (b) of NDPS Act and sentenced him to undergo RI for three years and to pay fine of Rs. 10,000/-, plus default stipulation.

2. Case of the prosecution in brief are that on 11.11.2002 Assistant Sub-Inspector Shri K.K. Mishra received a secret information from the informant that the accused/appellant was in illicit possession of *Ganja* and he is traveling in the bus No. M.P. 24 C 9089 from Konta to Durg. The said information was recorded in the *rojnamcha sanha* (Ex. P/16) and was forwarded to Superintendent of

Police, Jagdalpur. Thereafter, the bus was stopped in front of the Bodhghat Police Station and the police informed the accused/appellant of receipt of the said secret information. A notice (Ex-P/7) was given to the accused apprising him of his right of being searched by a Gazetted Officer or Executing Magistrate but he gave his consent of being searched by the Police itself. On being searched, five packets of *Ganja* tied around his waist and both thighs were seized and on weighment the contraband came out to be 2 kilograms. The A.S.I. K. K. Mishra (PW-3) then tested the said ganja by smelling and burning and identified it as *Ganja*. The Investigating Officer prepared two samples of 25-25 grams each and seizure of the contraband was effected. Thereafter, the FIR was registered against the accused/appellant and he was taken into custody. The information regarding the arrest of the appellant was sent through wireless to the Superintendent of Police, Jagdalpur. The samples so drawn were sent to Forensic Science Laboratory for analysis and ultimately it was found to be *Ganja* vide report (Ex-P/27). After completion of investigation, charge-sheet was filed before the concerned Court. The learned Special Judge after full fledged trial convicted the accused/appellant under Section 20(B) II (b) of the NDPS Act and sentence him to undergo R.I. for three years and to pay fine of Rs.10,000/-, with default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that out of four two independent witnesses have not supported the case of the prosecution and have declared hostile and the remaining two being the police witnesses, their testimony cannot be attached much weightage as they are bound to support the case of the prosecution.

He further submits that as the mandatory provisions of the Special Act have not been adhered to, the findings recorded by the Court below holding the accused/appellant guilty under the NDPS Act cannot be sustained. He further submits that the accused cannot be convicted on the sole testimony of police. According to him, the judgment impugned being not based on proper appreciation of the material on record is liable to be set aside.

4. State counsel opposes the argument advance in this behalf and submits that looking to the act of the accused/appellant, the trial Court rightly convicted and sentenced the appellant. The judgment passed by the Court below is well founded and there is no scope for any interference, hence the appeal may be dismissed.

5. Heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

6. After closely scrutinizing the evidence of all the witnesses, it is found that the conviction of the appellant is based on the evidence of Assistant Sub-Inspector K.K. Mishra (PW-3). Evidence reveals that though the independent witnesses have turned hostile yet the police people who searched the accused, effected seizure of contraband from him, drawn samples and sent the same the Forensic Science Laboratory for chemical examination has clearly supported the case of the prosecution and he being merely a police personnel cannot be dis-believed nor his testimony can be discarded. If his evidence is seen minutely, it clearly emerges that after getting the bus stopped he apprised the accused of his legal rights of being searched by Executive Magistrate or Gazetted Officer, but the accused showed

his readiness of being searched by himself. He has further stated in categorical terms that on weighment of contraband the same came out to be 2 kilograms and after receipt of report from the laboratory it was found to be Ganja. The accused/appellant has not pleaded any previous animosity or dispute with the aforesaid police official on the basis of which the possibility of false implication of the accused at his hands could be looked for. In such cases when there is no apparent legal flaw, the evidence of police officials cannot be ignored. Therefore, after overall consideration of the facts, circumstances and evidence of the witnesses, I come to this conclusion that the trial Court has not committed any error in convicting the appellant for offence in which he has been convicted.

7. Considered the prayer made by the appellant for reduction of sentence and further that there is no allegation made by the prosecution regarding any criminal antecedent of the appellant, I feel inclined to allow the prayer for reduction of the jail sentence.

8. Conviction of the appellant under Section 2(B) II (B) of the NDPS Act vide order dated 10.07.2003 is hereby maintained. That the incident had taken place about 17 years back and that the accused/appellant had already remained in jail for about ten months and has thereby suffered a lot for his folly, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on him to the period already undergone by him. Order accordingly.

9. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge