

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 222 of 2004**

- Rajaram Singh, son of Ramashray Thakur, aged about 40 years, Occupation- Cloth Merchant, R/o. Village- Temri, P.S. Mungeli, Tahsil- Mungeli, Distt.- Bilaspur (C.G.)

----Appellant**Versus**

- State of Chhattisgarh, through : Police Station Mungeli, District- Bilaspur, Chhattisgarh.

---- Respondent

For Appellant : Shri Anand Gupta, Advocate.
For Respondent/State : Shri Vikash Shrivastava, PL.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****05.02.2020**

1. When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of the High Court Legal Service Committee to represent the appellant.

2. On being asked to Shri Anand Gupta, who is one of the

empanelled lawyers of High Court Legal Service Committee in this regard, he is ready and willing to argue the matter. Therefore, in the interest of justice, Shri Anand Gupta, who is one of the lawyers in the panel of High Court Legal Service Committee, is appointed as counsel to represent the appellant.

3. Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

4. This appeal arises out of the judgment of conviction and order of sentence dated 16.02.2004 passed by the Special Judge (N.D.P.S. Act), Durg in Special Criminal Case No.18/2003, convicting the accused/appellant for the offence punishable under Section 8 (C) read with 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for one year and to pay fine of Rs.3,000/- with default stipulation.

5. As per prosecution case, on 18.10.2003, at about 4.00 pm Narayan Oti, Sub Inspector received information from informant that one person namely-Rajaram Singh was carrying *ganja* in his motor-cycle. The said information was reduced to writing as Ex. P/2) and Rojnamchasanha vide Ex.P/23-A and forwarded to the Superior Officer vide Ex.P-.24-A. The police party went to the spot, apprehended the accused, in presence of witnesses- Dukhiram & Dwarkadas gave him notice (Ex.P-5) 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-6. Personal

search of the police party and the witnesses was also made by the appellant vide Ex.P-4 and nothing was found. On search of the bag, which the appellant was carrying, Ganja like substance was recovered and on being examined by smelling and burning, it was found to be Ganja vide Ex.P-7. On weighment being done of the contraband it was found to be 1.590 kgs vide Ex.P-1. Two samples, each of 25 gms, were drawn from the said contraband and seizure memo (Ex.P-11) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-12, the accused was arrested vide Ex.P-13, intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Durg, District- Durg (C.G.). After reaching police station, FIR (Ex-P/18) 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 22.10.2003 with intact seal and report of FSL is Ex.P-30, which confirms the seized contraband to be the Ganja.

6. After usual investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charges against the accused/appellant under Sections 8 (C) read with 20(b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused denied the charges levelled against him and prayed for

trial.

7. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses namely- Jankuram (PW-1), Dukhiram (PW-2), Narayan Oti (PW-3), Dwarkadas (PW-4), Nand Kumar Thakur (PW-5), Tarandas (PW-6) & Bhagwan Singh Dhurve (PW07). 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.

8. 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 4 of this judgment.

9. Learned counsel for the appellant/accused submits that statutory compliance as required under Sections 41, 42 and 50 the NDPS Act has not been made while making seizure of the alleged *Ganja*. He also submits that due to previous enmity between the accused and Dukhiram (PW02), who is a witness to seizure and other proceedings under the NDPS Act, appellant has been falsely implicated in the crime in question. Alternatively he submits that appellant was 40 years of age at the time of incident and now he is above 56 years and looking to the fact that incident happened on 18.10.2003 near about 17 years lapsed and he has remained in jail for about four months, it is prayed that the appellant may be sentenced to the period already undergone by him by giving him

benefit of Probation of offenders Act.

10. Learned counsel for the State, while supporting the impugned judgment, submits that there is no reason to disbelieve the evidence of Investigating Officer and other seizure witnesses and no suggestion was made by defence in cross-examination of witnesses that there was any previous enmity between the accused and the witness- Dukhiram (PW02). He also submits that all the mandatory provisions of Sections 41,42 & 50 of the NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged Ganja. Notice under Section 50 of the NDPS Act was duly given to the appellant, thereafter, personal search of the police party and the witnesses was also made by the appellant and then consent was given by the appellant, and therefore, the appellant has rightly been convicted & sentenced by the Trial Court, which does not call for any interference in the instant appeal.

11. I have heard learned counsel appearing for the parties and perused the material available on record.

12. The contention made by learned counsel for the appellant that due to previous enmity between the accused /appellant and the witness- Dukhiram (PW02), he has been falsely implicated, has no substance as neither any suggestion in that regard was given to any of the witnesses in their Court statements nor any evidence was adduced by the appellant himself to substantiate the said defence.

13. As per the evidence of Narayan Oti, (PW03), Sub Inspector he received secret information from an informant that one person namely-Rajaram Singh was carrying *ganja* in his motor-cycle. The said information was reduced to writing as Ex. P/2 and Rojnamchasanha vide Ex.P/23-A and forwarded to the Superior Officer vide Ex.P-.24. Thereafter, the police party along with witnesses Dukhiram & Dwarkadas went to the spot, apprehended the accused, gave him notice (Ex.P-5) 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-6. Personal search of the police party and the witnesses was also made by the appellant vide Ex.P-4 and nothing was found. On search of the bag, which the appellant was carrying, Ganja like substance was recovered and on being examined by smelling and burning, it was found to be Ganja vide Ex.P-7. On weighment being done of the contraband it was found to be 1.590 kgs vide Ex.P-1. Two samples, each of 25 gms, were drawn from the said contraband and seizure memo (Ex.P-11) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. Spot map was prepared vide Ex.P-12 and the accused was arrested vide Ex.P-13. Intimation of the entire proceedings was forwarded to the office of Superintendent of Police, Durg, District- Durg (C.G.). After reaching police station, FIR (Ex-P/18) 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 22.10.2003 with intact seal and report of FSL is Ex.P-30, which confirms the seized contraband to the Ganja. Thus, it appears that the statutory provisions as required under 50 of the NDPS Act has duly been complied with while making search and seizure of alleged Ganja.

14. Dukhiram (PW02) has proved all the documents of Ex. P/1 to Ex.P/13 and also proved this fact that after receiving the information through the informant alongwith the staff and independent witnesses, they searched the accused after giving him notice and recovered ganja from him vide Ex. P/11. Therefore, there is no reason to disbelieve the statement of Dukhiram (PW02).

15. Dwarkadas (PW04) has also proved his signature on documents Exs.P/1, 2, 3, 5, 6, 7 to P/13 & Ex. P/16. There is no contradiction or omission in the statement of said witness.

16. Nandkumar Thakur (PW05) has proved Ex. P/27 Malkhana Register copy and kept the alleged article in safe custody of Malkhana.

17. From careful perusal of the evidence of aforesaid witnesses, it is apparent that there is no reason to disbelieve the statements of the prosecution witnesses such as Dukhiram (PW-2), Narayan Oti (PW-3) – Investigating Officer, Dwarikadas. From the oral and documentary evidence, it is seen that compliance of the statutory provisions under Sections 41, 42 and 50 the NDPS Act has been

complied with while making search and seizure of the *Ganja*. The defence has failed to elicit anything from the prosecution witnesses which could suggest that witnesses had any interest or enmity with the accused/appellant for his false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record. In these circumstances, there is no reason to suspect the credibility of these witnesses.

18. 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 8(c) read with Section 20 (b) (ii)(B) of the NDPS Act cannot be faulted with and the same are hereby affirmed.

19. So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2003, the appellant is facing trial since 2003, at the time of incident he was 40 years of age and at present must be of 56 years and the fact that the appellant has already remained in jail for four months and at present he is on bail, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the trial Court intact.

20. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 8 (C) read with 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985,

his jail sentence is reduced to the period already undergone by him. However, the sentence of fine of Rs.3,000/- with default stipulation as imposed by the trial Court shall remain intact.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge

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