

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1011 of 2001

1. Krishna Kumar S/o. Naresh Ram, Aged about 25 years,
2. Pradeep Kumar S/o. Radha Krishna, Aged about 25 years,
3. Sudama Prasad S/o. Ram Prasad, Aged about 35 years,
4. Rohit Raj S/o. Vijaya Kumar, Aged about 19 years,

All resident of Daltongunj, District Daltongunj (Jharkhand)

---- Appellants

Versus

State of Chhattisgarh, through Police Station Sukma, District
Dantewada (CG)

---- Respondent

with

Criminal Appeal No. 1014 of 2003

Karam Joga, S/o. Karam Lachha, Aged about 20 years, R/o.
Khamharguda, District Malkhangiri (Orissa)

-----Appellant

Versus

State of Chhattisgarh, through Police Station Sukma, District
Dantewada (CG)

----Respondent

For Appellant No. 1,3 and 4 : Mr. Rishi Rahul Soni, Advocate.
For Appellant No. 2 : Mr. Manoj Paranjpe, and
Ms. Vaishali Mahilong, Advocates.
For Appellant No. 5 : Mr. Arun Kochar, Advocate.
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

13.02.2020.

1. These appeals are directed against the judgment dated 05.10.2001 passed by Special Judge (NDPS Act), Bastar place Jagdalpur, in Special Criminal Case No. 27/2001 whereby the appellants were convicted under Section 20(B)(I) of the Narcotic Drugs & Psychotropic Substance At (hereinafter referred to as "Act") and were sentenced to undergo rigorous imprisonment for 3 years and fine of Rs. 10,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 1 year.
2. Prosecution story in brief are that Janardan Thakur (PW-4) was posted as Assistant Sub Inspector in Police Station Sukma. On 07.04.2001 ASI Janardan Thakur (PW-4) with Additional S.P. Narendra Khare and other police members were on patrolling duty. At the same time, one truck bearing registration No. MP 27/6365 came over there which was stopped for checking by the police. In the said vehicle four persons were sitting suspiciously and on seeing the police the accused/appellants tried to escape from there thereafter they were successfully apprehended by the police. Notices were given to the accused/appellants under Section 50 of the Act vide Ex.P/1. Prior to search of the accused and their vehicle, the police party gave their own search to the accused, on which nothing objectionable was found from their possession. On search of the vehicle i.e. truck bearing No. MP 27/6365, in 4 gunny

bags were found. After examining the same through tasting, smelling, rubbing and burning, it was found to be ganja vide identification memo under Ex.P/8 to Ex.P/12. Weighing machine was called by (PW-4) vide Ex.P-13 and during weighment 17 KG Ganja was seized from appellant Pradeep, 17 KG Ganja was seized from appellant Krishna Kumar, 14 KG Ganja was seized from appellant Sudama, 23 KG Ganja was seized from appellant Rohitraj and 19 KG Ganja was seized from appellant Karam Joga and thereafter weight panchanama under Ex.P-14 to Ex.P-18 was prepared. Ganja was seized from the appellants under Ex.P-19 to Ex.P-23 respectively. Two sample of 25-25 grams were separated from the said articles and sealed in the presence of witnesses and rest of Ganja was sealed in different packet. Seized articles were handed over to In-charge of Malkhanan of the said Police Station who was Head constable Ramsingh Dhruv. The accused/appellants were arrested. FIR (Ex.P/31) was registered against them. Seized articles were sent for examination to Forensic Science Laboratory, Raipur for chemical examination under Ex.P-34 and as per FSL report Ex.P-36, the samples were confirmed to be ganja. In the FSL report it has been mentioned that the samples which were sent for examination were duly sealed and the seals tallied with the specimen seal. All legal formalities were performed by the Police Officers and the matter was investigated and the charge sheet was filed against the accused/appellants in the Court of Special Judge NDPS Act, wherein the Special Judge NDPS Act framed charges as

mentioned above to which the accused/appellants did not plead guilty. The Special Judge, NDPS Act, conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded and after completion of trial, the Special Judge considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

3. Learned counsel for appellants submits that there is non-compliance of Sections 42 to 50 of the NDPS Act. He submits that conscious possession of the contraband have not been proved by the prosecution. He submits that weighment of the contraband have not been done properly. Even the independents witness namely Rajesh Mishra (PW-1) and Shambhu Nath (PW-2) have not supported the prosecution case and has been declared hostile. Lastly it has been argued that the appellants No. 1 to 4 were in jail since 08.04.2001 to 19.03.2002 and appellant Karam Joga was in jail since 08.04.2001 to 18.10.2003, therefore, the jail sentence as well as the fine sentence imposed on the appellants are very much on the higher side and therefore, the same may be reduced suitably.
4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
6. Janardan Thakur (PW-4) has stated in his evidence that on 07.04.2001 he was on patrolling duty with his superior officer Additional S.P. Narendra Khare and other police members. At the same time, one truck bearing registration No. MP 27/6365 came over there which was stopped for checking by the police but the appellant on seeing the police they tried to escape from there thereafter they were successfully caught by them. He stated that he gave notice to the appellants and made seizures of Ganja under Ex.P-19 to Ex.P-23 respectively. He has further stated that seized Ganja and its sample packets were deposited in the safe custody of Malkhana under Ex.P-38(c). They were sent to the FSL for chemical examination and after receiving the FSL report (Ex.P36), a charge-sheet was filed.
7. Head Constable Ram Singh Dhruv (PW-5) has deposed that on 07.04.2001 itself, the Investigating Officer had handed over him the seized Ganja and its sample packets for keeping the same in the Malkhana and he had received the said articles and kept the same in the Malkhana and had given the Investigating Officer an acknowledgment (Ex.P-38) of the received articles. After completing all the formalities as required under the law, a charge-sheet was filed against the appellants and they have rightly been convicted by the Trial Court. This Court finds no force in the

argument of learned counsel for the appellants that sections 42 and 50 of the NDPS Act were not followed under the law. Since at the time of vehicle inspection, Additional Superintendent of Police namely Narendra Khare himself was present throughout, the plea of the appellant that the information to the superior officer has not been given, does not appear to have any substance and therefore, it is turn down. Similarly, notices of search under Ex.P-3 to Ex.P-7 and seizure of Ganja were prepared under Ex.P-19 to Ex.P-23 mentioning the name of all the accused and thereupon they have given consent to be searched by the I.O. under Ex.P-1. The contention of the counsel for the appellants that the appellants were not served notices individually is also considered and rejected. In other words, this Court holds that the prosecution has made compliance of mandatory provisions of sections 42 and 50 of the NDPS Act while proceeded against the appellants. All other legal formalities as such searched and seizure and weighment, draying all samples and sending the same to the laboratory for chemical examination have also been carried out by the prosecution and the report of FSL Ex.P 38(C) also confirms that the contraband seized from the appellants were Ganja.

8. In view of the above discussion, this Court is of the considered opinion that the prosecution has proved its case beyond doubt. Therefore, no interference with the finding of the Court below is called for, therefore, the conviction imposed upon the appellants are hereby affirmed.

9. So far as sentence part is concerned, appellants Krishna Kumar, Pradeep Kumar, Rohit Raj and Karam Joga already undergone about one year out of the total jail sentence of 3 years. Considering the facts and circumstances of the case and that the appellants have already faced a long drawn prosecution, in the opinion of this Court, interest of justice, would be served if their sentences is reduced to the period already undergone by them.
10. From the report of Jail Superintendent Central Jail, Ambikapur it is clear that appellant Sudama has completed the entire jail sentence and has released from the jail on 07.01.2004 and therefore, this appeal as regards appellant Sudama is hereby dismissed.
11. Appeals are thus allowed in part to the extent indicate above. As the appellants are already on bail, their bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
JUDGE