

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on : 25.02.2020****Delivered on : 08.05.2020****CRA No. 733 of 2001**

Raj Kumar Dubey, S/o- Shri Pyarelal Dubey, Aged about- 35 years, Occupation- Truck Driver, R/o- Brahmanpara, Bemetara, Tahsil- Bemetara, District- Durg (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, through- Police Station, Nagarnar.

---- Respondent

For appellants	: Mr. Vikram Dixit, Advocate
For State	: Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment dated 26th June, 2001 passed by Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "N.D.P.S. Act, 1985") Bastar, Jagdalpur (C.G.), in Special Case No. 55/2000 wherein the said Court convicted appellant for charge under Section 20(B)(2)(b) of N.D.P.S. Act and sentenced him to undergo R.I. for 3 years with fine Rs.5000/- with default stipulation.
2. In the present case, as per version of prosecution on 12th of October, 2000 at about 11.00 am. Sub inspector Bhupendra Singh Mourya of Police Station Nagarnar, received secret information to the effect that one person having one slight blueish coloured suit case and one green coloured bag, is keeping Ganja on barrier of Dhanpunji. The S.I. Bhupendra Singh recorded the same in the roznamcha sanha and also

prepared panchnama(Ex.P.2) and sent the same to the senior officer and after that he took the witnesses and police staff and went to Dhanpunji barrier. Said police officer had given a notice to the appellant as per Section 50 of the N.D.P.S. Act 1985 of his right of being searched by some gazetted officer, any magistrate or by him, on which the accused opted to search by this police officer(Sub Inspector). After search he was found in possession contraband article *Ganja*, which was seized and matter was investigated, appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that Provision of Section 42 of the N.D.P.S. Act 1985 and other provisions of the said Act, have not been complied with before search and seizure therefore, the case of the prosecution is not proved. As per version of seizure witness 8.500 gm and 5.00 kg was seized in the present case but total quantity was shown to be 13.500 gm which is not correct. The trial Court has not evaluated the evidence properly and over-looked material, omission and contradiction therefore, finding arrived by the trial Court is not liable to be set aside.
4. On the other hand learned state supported impugned judgment and submits that finding of the trial Court is based on proper marshaling of the law factual and legal aspect of the matter.
5. Sub-Inspector Bhupendra Singh Mourya (PW-4) deposed before the trial Court that he received information that one in

possession of contraband article *Ganja* near barrier of Dhanpunji. This information was recorded by him as per Ex.P-2 and information was sent to higher authorities. Thereafter, he rushed to the spot with two witnesses namely Kamluram and Chaituram. These witnesses deposed that Sub Inspector Bhupendra Singh Mourya gave notice to the appellant as per Section 50 of the N.D.P.S. Act, 1985 that he may be searched by Magistrate or Gazetted officer in which he opted to be searched by this officer and thereafter, police personnel and witnesses were searched by the appellant, but no objectionable article was found. *Ganja* was seized from the appellant and when it is weighed, the contraband article was found to be 8.500 kg and 5.00 kg in two different bags, total it is found to be 13 kg and 500 gm, two samples from each were prepared and it was sealed. As per version of this witness the seized articles were kept in *Malkhana* and same was handed over to the in charge of *Malkhana* Head Constable Panchuram Kasi. This witness further deposed that procedure of search and seizure was informed to the Superintendent of Police as per Ex.P-19. This witness further deposed that seized samples were sent to the forensic science laboratory for examination and as per report Ex.P-20 the test of *Ganja* was found positive, version of this witness is unrebutted during cross examination. It is further supported by version of the Head Constable Panchuram Kasi in-charge of the *Malkhana* (PW-3) who kept in his custody the contraband article *Ganja* he made entry in his register as per Ex.13 and Ex.P-14. As per

version of this witness. Samples were sent to forensic science laboratory by Ratu Ram Netam, Constable, No. 410.

6. From the entire evidence, it is established that contraband article Ganja was seized from the possession of the appellant and same was proved to be *Ganja* after laboratory test. Information which was received by the Sub-Inspector Bhupendra Singh Mourya (PW-4) was sent to the higher authorities which is compliance of Section 42 of the N.D.P.S. Act 1985. He served notice to the appellant for his right to be searched by any magistrate or gazetted officer which is also compliance of the provision of Section 50 of the N.D.P.S. Act. Again, seized article was kept in safe custody of the *Malkhana* which is also compliance of the Section 55 of the N.D.P.S. Act, 1985. All the provisions have been complied with therefore, argument advance on behalf of the appellant is not sustainable. As per notification, the small quantity of ganja is 1 k.g, whereas the commercial quantity is 20 k.g. The quantity of contraband article seized in the present case is more than 1 kg. is neither small nor commercial quantity, therefore, commission of offence by the appellant falls within mischief of Section 20(B)(2)(b) of the Act, 1985 and deterrent punishment is required under the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed.

7. The trial Court awarded sentence of 3 years which cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is also not interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

8. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will issue non-bailable warrant against the appellant for his arrest to send jail for serving out the remaining part of the sentence. The trial court to submit its compliance report on or before 31st of October, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle