

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10-02-2020

Delivered on 05-03-2020

CRA No. 196 of 2009

- Kumari Sudama @ Rani Kewat d/o. Bhakku Kewat, aged 25 years, resident of Jairam Nagar, Police Station Masturi, District Bilaspur (CG).

---- Appellant

Versus

- State of Chhattisgarh through the District Magistrate, Bilaspur (CG).

---- Respondent

 For Appellant : Ms. Preeti Jha, Advocate appears as Amicus Curiae.

For respondent/State : Mr. Afroj Khan, Panel Lawyer.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 2-2-2009 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985")/Additional Sessions Judge, Bilaspur in Special Case No. 20 of 2007, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced her to undergo rigorous imprisonment for the period from 14-7-2007 to 2-2-2009 (period already undergone by

the appellant) and to pay fine of Rs.10,000/- with default stipulations.

2. As per prosecution case, Incharge of Police Station Masturi namely Sadhana Singh (PW/6) received information from one Mukhbir on 14-7-2007 that the appellant is selling contraband article Ganja illegally. This information was recorded in Rojnamcha Sanha and witnesses were called and thereafter Panchnama was prepared. The information was sent to Deputy Superintendent of Police through Constable No. 192 Bharatlal Sahu and thereafter he rushed to the spot without search warrant with police personnel and independent witnesses and instrument of measurement. A notice was served to appellant for search and he opted to be searched by this Police Officer. All the staff members and independent witnesses were searched and no objectionable article was found and thereafter they searched the house of the appellant in which contraband article Ganja was found in her possession to the tune of 4 kgs and 200 grams. Two samples of 25 grams each were separated and sealed and seizure memo was prepared. Seized article was kept in Malkhana of Police Station for safe custody and samples were sent for chemical examination to FSL where test of Ganja was found positive. After completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. The appeal is preferred on the following grounds.

- i) Only to fill up lacunae of the prosecution case, prosecution adduced a new evidence which is not permissible under the law.
- ii) Seal was not found in the article and acknowledgement regarding receiving of contraband article is also not produced before the trial court.
- iii) Independent witnesses have not supported the version of prosecution. It has come on record that the Ganja was recovered under the cot in a Trunk and trunk was closed, therefore, finding of the trial court is not sustainable.
- iv) Prosecution has failed to comply with mandatory provisions of the Act, 1985, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Sub Inspector of Police Station, namely Sadana Singh (PW/6) deposed before the trial court that he received information from one informer that illegal contraband article Ganja was kept in the house of appellant. This information was recorded in Rojnamcha Sanha and thereafter he called two independent witnesses and information was sent to Dy. Superintendent of Police through Constable 192 and same is mentioned in Rojnamcha Sanha of Police Station as per Ex.P/11. Thereafter, he rushed to the spot with police personnel and independent witnesses. He served notice to appellant that she may be searched through Magistrate or by the Gazetted Officer but she opted to be searched by this Police Officer. Thereafter, all the staff members and independent witnesses were searched but no objectionable article was found. Thereafter, house of the appellant was searched in which contraband article Ganja was found which was weighed and found to be 4 kgs and 200 grams. Two samples of 25 grams each were separated which are marked as A-1 and A-2 which were sealed and rest of the article was also sealed and thereafter seized article was handed over to Incharge of Police Station and he acknowledged the same as per Ex.P/8. Seized sample was sent to FSL through Superintendent of Police. Version of this witness is supported by version of Assistant Sub

Inspector PW/3 who received seized article and samples and kept the same in Malkhana of Police Station for safe custody. Samples were sent through Constable Sukhdev from Malkhana to FSL which is further supported by version of Constable Sukhdev. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour or defence.

7. From the evidence of these witnesses, it is established that appellant was in possession of contraband article Ganja. From the evidence of Inspector Sadhana Singh (PW/6), it is established that information was sent to higher authorities as per Section 42 of the Act, 1985, notice was served to appellant under Section 50 of the Act, 1985, seized property was kept in Malkhana of Police Station for safe custody as per provisions of Section 55 of the Act, 1985 and information regarding seizure was sent to Superintendent of Police as per provisions of Section 57 of the Act, 1985 and all the mandatory provisions have been complied with, therefore, it is not a case where any provision of the said Act, 1985 is flouted with.

8. On an overall assessment of entire evidence, argument advanced on behalf of the appellant is not sustainable. Quantity of 1 kg of Ganja is small quantity while quantity of 20 kgs of Ganja is commercial quantity. In the present case, Illegal possession of quantity of Ganja is 4 kgs and 200 grams which is neither small

quantity nor commercial quantity therefore, the case of the appellant squarely falls within offence of Section 20(b)(ii)(b) of the Act, 1985 for which the trial Court has convicted the appellant. Conviction of the appellant is hereby affirmed. The trial court awarded sentence for the period already undergone by the appellant and imposed fine of Rs.10,000/- which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered with.

9. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju