

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 7-2-2020

Delivered on 20-2-2020

CRA No. 327 of 2011

- Sukha Chand Das s/o. Sudaru Das, Caste Panika, age 48 years, r/o. Village Borpadar, P.S. City Kotwali, Jagdalpur (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Nagar Nar, Dist. Bastar (CG).

---- Respondent

 For Appellant : Mrs. Usha Chandrakar, Advocate.

For respondent/State : Mr. Afroj Khan, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 26-3-2011 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985) (for short, "the Act, 1985") Jagdalpur, in Special Case No. 22 of 2010, wherein the said Court has convicted the appellant for commission of offence under Section 20 (b)(ii) (b) of the Act, 1985 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.3,000/- with default stipulations.

2. As per prosecution case, on 9-5-2010 Police Officer of Police Station, Bakavand namely K.D. Singh (PW/8) received confidential information from Mukhbir that the appellant is in possession of contraband article Ganja at Pithapur square and waiting for bus towards Jagdalpur. He recorded the same in Panchnama and information was sent to superior officer. Two independent witnesses were called and thereafter police personnel and other witnesses reached to the spot and found Ganja in possession of the appellant which was kept in a motor-cycle. The said article was seized and sealed. Samples were separated and sealed. The matter was investigated and 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) PW/5 Neelam Baghel and PW/6 Jai Ram Nag have not supported the version of prosecution and conviction of the appellant is based on the statement of K.D. Singh, (PW/8) who is Police Officer., therefore, finding of conviction is not liable to be sustained.
- ii In the present case, provisions of Sections 42 and 50 of the Act, 1985 have not been complied with but the trial court overlooked

the same.

- iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in the matter of **Arif Khan alias Agha Khan vs. State of Uttarakhand, reported in AIR 2018 SC 2123.**

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. Police Officer K.D. Singh (PW/8) deposed before the trial court that on 9-5-2010 he was posted at Police Station Bakavand and at about 14.30 O' clock he received information that one person having contraband article Ganja is standing at Pithapur square and waiting for bus towards Jagdalpur. He recorded the same in Rojnamcha Sanha as per Ex.P/25 and forwarded the information to City Superintendent of Police. Thereafter, he called two independent witnesses namely Neelam Baghel and Jai Ram Nag and thereafter

informed to City Superintendent of Police regarding proceeding with the case. He rushed to the spot and when he called the appellant, he started fleeing. As per version of this witness, he gave notice to the appellant under Section 50 of the Act, 1985 that he can be searched by any Gazetted Officer or Magistrate but he opted to be searched by this Police Officer. After that he himself, staff and other witnesses were searched by the appellant and no objectionable article was found. Thereafter, motor-cycle of the appellant was searched in which cement plastic bag was found in which contraband article Ganja was found. Seized article was weighed and it was found to be 10 kgs. The article was mixed properly and two samples of 25 grams each were separated and sealed and rest of the Ganja was also seized. Samples were marked as A-1 and A-2. He made specimen seal and fixed the same on the sample. As per version of this witness, seized articles were deposited in Malkhana and handed over the same to Incharge of Malkhana. Samples were deposited in FSL and this witness produced seized article in the trial court and also submitted samples which were returned by the laboratory. Version of this witness is supported by version of Head Constable Deonath Thakur (PW/7) who was Incharge of Malkhana and received the seized article from Police Officer K.D. Singh (PW/8) and deposited the same in Malkhana. He made entry in Malkhana register as per Ex.P/27. As per version of this witness, he gave acknowledgement to the Police Officer as per Ex.P/24. As per version of this witness, samples were sent to FSL by Constable

No.299. Version of this witness is supported by version of Constable Dhinvendra Chaudhari (PW/2) who had taken the samples from Police Out Post Bakavand and deposited the same in FSL. As per version of this witness, he received samples on 11-5-2010 and deposited in FSL on the next day ie., on 12-5-2010. After depositing the article he received acknowledgment and deposited the same at Police out post Bakavand. Version of Police Officer K.D. Singh (PW/8) is supported by version of constable Vinod Kumar Chandel (PW/4) who weighed the seized article and found it to be 10 kgs. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. There is nothing on record to say that the appellant has been roped in a false charge and there is nothing on record to disbelieve the testimony of Police officers. There is nothing on record to say that the appellant has been roped out of grudge or otherwise, therefore, it is established from the evidence that the appellant was in possession of contraband article Ganja to the tune of 10 kgs.

7. As per version of Head Constable Sukal Singh Gavade (PW/1), he was Reader in the office of City Superintendent of Police, Jagdalpur and he received information regarding search in the present case as per Ex.P/1 and gave acknowledgment as per Ex.P/2, Ex.P/3 and P/4. Again after search and seizure he received information which was recorded as per Ex.P/5. From the evidence of this witness which is supported by Constable Kheduram (PW/3), it is

established that the provisions of Section 42 of the Act, 1985 regarding sending of information regarding search to higher officer and provisions of Section 57 of the Act, 1985 regarding sending of information of search and seizure are complied with. From the entire evidence, it is clear that the appellant was provided opportunity as per Section 50 of the Act, 1985 which is compliance of Section 50 of the Act, 1985. The seized article was kept in safe custody of Malkhana which is compliance of Section 55 of the Act, 1985. In this way, there is nothing on record to say that provisions of the Act, 1985 have been flouted with. Argument advanced on behalf of the appellant is not sustainable and the case law cited on his behalf is of no help to him as the same is clearly distinguishable from the facts of the present case. Conviction of the appellant is hereby affirmed.

8. Illegal possession of quantity of 1 kg Ganja is small quantity and 20 kgs and more of Ganja is commercial quantity. In the present case, quantity of Ganja is 10kgs which is neither small quantity nor commercial quantity, therefore, the case of the appellants squarely falls within offence of Section 20(b)(ii)(b) of the Act, 1985 for which the trial Court has convicted the appellants. The trial court awarded sentence of three years and fine of Rs.3,000/- 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. The appellant is reported to be on bail. His

bail bonds stand cancelled. The trial Court will prepare supersession warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 31-8-2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju