

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 900 of 2007**

- Raj Kumar Prasad, S/o Late- Jagdish Sao age- 45 years R/o Village- Purani Bazar. Gadawa (Jharkhand).

----Appellant**Versus**

- State of Chhattisgarh through Police Station Ambikapur District- Surguja (C.G.).

---- Respondent

For Appellant	: Shri R. N. Jha, Advocate.
For Respondent/State	: Shri Devendra Verma, Govt. Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board**17.09.2020**

1. Proceedings of the matter have been taken-up through video conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 21st September, 2007, passed by the Court of Special Sessions Judge, Surguja at Ambikapur in Special Criminal Case No.23/2006, convicting the accused/appellant for the offence punishable under Section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and sentencing him to undergo rigorous imprisonment for two years and fine of Rs.15,000/-, in default of payment of fine to further undergo rigorous imprisonment of six months.

3. Case of the prosecution, in brief, is that on 06.09.2006, Nasar Siddiqui, Inspector, who was posted at Police Station Ambikapur at the relevant time, received secret information from the informant that the present appellant/accused is in possession of contraband article i.e. brown sugar and trying to sell it near Dinesh Lodge, Deviganj Road, Ambikapur. The said information was reduced in writing vide Exs. P-01 and the said information was forwarded to the City Superintendent of Police, Ambikapur vide Exs. P-19C, P-20C & 21-C. The police party went to the spot, apprehended the accused, in presence of witnesses namely Mahendra Singh (PW-1) & Shyamdhari (PW-2) gave him notice (Ex.P-2) 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. Firstly the members of raiding party and the witnesses were searched by the appellant vide Ex. P-3 & Ex. P-4, which was without any result. Thereafter, after obtaining the consent of the appellant vide Ex.P-2 itself, accused/appellant was searched by the police party and found Brown Sugar like contraband in 10 pouches from the pocket of the appellant/accused vide Ex. P-5. Weight of the alleged brown sugar was 45.100 grams along with the weight of the packets on which the brown sugar was kept. Subsequent to that, it was found that excluding the weight of packets, the weight of the contraband was 42 grams vide P-9. One packet of 42 grams of the said brown sugar and another empty packets of polythene was prepared and the said packets

were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Exs. P-10 & P-11, respectively. After reaching police station, FIR (Ex-P-25) was registered against the appellant under Sections 8 / 21 of the NDPS Act.

4. After usual investigation, charge sheet was filed against the accused/appellant under Section 8 / 21 of the NDPS Act. The Special Judge framed charge against the accused/appellant under Section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Accused denied the charge levelled against him and prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined 08 witnesses namely- Mahendra Singh (PW-1), Shyamdhari (PW-2), Victor Lakda (PW-3), Sangram Singh (PW-4), Nasar Siddiqui (PW-5), Durgesh Ravte (PW-6), Bhola Ram (PW-7), Sandeep Gupta (PW-8). 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. However, no defence witness has been examined on behalf of the accused/appellant.

6. 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 2 of this judgment.

7. Learned counsel for the appellant/accused submits that though he has raised various grounds in the memo of appeal, but

he is not pressing all those grounds and is confining her argument only to the extent that in the instant case independent witnesses have not supported the prosecution case and conviction cannot rest only on the basis of statements of official witnesses. He further submits that the statutory compliance as required under the NDPS Act has not been made while making search and seizure of the alleged brown sugar. He also submits that specimen of the seal affixed on the seized contraband was not sent to the FSL for its verification, therefore, there is every possibility of tempering with the seized article. Alternatively, he submits that appellant was 45 years of age at the time of incident and now he is aged about 59 years and looking to the fact that incident occurred in the year 2006 i.e. near about 14 years lapsed and the appellant has remained in jail for about 1 year, 2 months and 11 days, it is prayed that the appellant may be sentenced to the period already undergone by him.

8. 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. He also submits that all the mandatory provisions contained in Sections 42, 50, 52, 55 & 57 of the NDPS Act have been duly complied with by the investigating Officer while making search and seizure of alleged brown sugar. Notice under Section 50 of the NDPS Act was duly given to the appellant and, 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 Special Court as aforementioned, which does not call for any interference in the instant appeal.

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

10. As per the evidence of Nasar Siddiqui (PW05), Inspector, who was posted at Police Station Ambikapur at the relevant time, he received secret information that a person near Dinesh Lodge, Deviganj Road, Ambikapur was having Brown Sugar in his possession unauthorisedly and he is trying to sell it near Dinesh Lodge, Deviganj Road, Ambikapur. The said information was reduced into writing vide Ex. P-1 and in Rojnamchasanha vide Ex.P/24-C and forwarded the same to the City Superintendent of Police, Ambikapur vide Ex. P-19C, Ex. P-20C & P-21C. The police party along with witnesses namely Mahendra Singh (PW01) & Shyamdhari (PW02) went to the spot, apprehended the accused, gave him notice (Ex.P-02) 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. Personal search of the police party and the witnesses was also made by the appellant vide Ex. P-3 & Ex. P-4. After receiving consent of the appellant vide Ex. P-2 itself, from search of the appellant contraband like Brown Sugar was recovered and on being examined it by seeing, smelling and burning it was found to be contraband (Brown Sugar) vide Ex.P-6.

On weighment being done of the contraband in 10 pouches from the pocket of the appellant/accused. Weight of the alleged brown sugar was 45.100 grams along with the weight of the packets on which the brown sugar was kept. Subsequent to that, it was found that excluding the weight of packets, the weight of the contraband was 42 grams vide P-9. One packet of 42 grams of the said brown sugar and another empty packet of polythene were prepared and the said samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo vide Exs. P-10 & P-11, respectively. Dehati Nalisi (Ex. P/23) was prepared, the accused was arrested vide Ex.P-12, intimation of the entire proceedings was forwarded to the office of City Superintendent of Police, Ambikapur vide Ex.P-17 After reaching police station, FIR (Ex-P-25) was registered against the appellant under Section 8 /21 of the NDPS Act. The remaining contraband was deposited in Malkhana and sample was sent to FSL for chemical examination, which was received by FSL, Raipur on 13.09.2006 with intact seal and report of FSL is Ex.P-.30 which confirms the seized contraband to be Di-acital Morphine (Brown Sugar).

11. In the instant case, though the independent witnesses namely Mahendra Singh (PW- 01) and Shyamdhari (PW02) have not supported the prosecution case but they have duly signed and admitted their signature on the documents i.e. Exs. P/1 to P/12 and, therefore, there is no reason whatsoever to discard / disbelieve the evidence of these police officials witnesses &

independent witnesses for the purpose of convicting and sentencing the accused/appellant as aforementioned particularly when they have admitted their signatures on the requisite documents i.e. Ex.P/1 to Ex. P/12.

12. Nasar Siddiqui (PW05), Victor Lakda PW-3 and Durgesh Ravte (PW-6) are the police officials and they were performing their official duties at the relevant point of time and, therefore, there is no reason to disbelieve the statements of the above mentioned witnesses as entire proceedings of the case were recorded by these police officials in the Rojnamchasana.

13. Sandeep Gupta (PW08) has stated in his evidence that in his presence the weighing panchanama (Ex.P-7.) was prepared and he has duly signed on those documents he has supported the case of the prosecution.

14. Thus, looking to the statements of prosecution witnesses, in particular, the statement of investigating Officer- Nasar Siddiqui (PW05), Inspector, it is quite apparent that all the relevant procedure prescribed under the NDPS Act had duly been complied by the Investigating Officer while making search and seizure of the contraband (Brown Sugar) and there is no reason to disbelieve the statements of Investigating Officer and other police officials.

15. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is

reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police Officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [Pramod Kumar V. State (GNCT) of Delhi reported in **AIR 2013 Supreme Court 3344**]. The same principle of law has been reiterated by the Supreme Court Judgment in the matter of **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554** and in paragraph 10 it has been observed as under:

“10. There is no legal proposition that evidence of

police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

16. In the present case, though the independent witnesses- Mahendra Singh (PW01), Shyamdhari (PW02) have not fully supported the prosecution case but the other witnesses i.e. police personnel have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution, defence has utterly failed to elicit anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

17. 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 21(b) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

18. So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2006 the appellant is facing trial since 2006, at the time of incident he was 45 years of age and at present must be of 59 years. Appellant is reported to have remained in jail for a period of 1 year, two months and 11 days 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.

19. Resultantly, the appeal is allowed in part. While maintaining conviction of the appellant under Section 21(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.15,000/- 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