

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 551 of 2011

1. Natho Manjhi S/o Pusha Manjhi, aged about 25 years, R/o Village Wadraag, Police Station Udaygiri, District Gajpati (Orissa).

---- Appellant

Versus

1. State of Chhattisgarh, through S.H.O. (G.R.P.) Raipur, District Raipur (C.G.)

---- Respondent

For Appellant	:	Shri Rishi Sahu, Advocate appears on behalf of Shri Surfaraj Khan, Advocate.
For Respondent/State	:	Shri Rahul Jha, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

28/10/2020

- 1) The matter is heard through Video Conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 16/06/2011 passed by Special Judge, (N.D.P.S.) Raipur in Special Criminal Case No. 09/2011; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b) (ii)(B) of Narcotic Drugs and Psychotropic Substances Act, (in short "the NDPS Act")	R.I for 2 years & fine of Rs. 10,000/- in default of fine additional R.I. for 6 months.

- 3) Case of the prosecution in brief is that on 07/11/2010 S.S. Shukla PW-06 Inspector and SHO of GRP Raipur received a secret information that three persons of age 25-30 years are carrying Ganja in three different bags and travelling in Train No. 8518 in down Link Express to Bilaspur. After recording the said information in writing vide Ex. P-1 and preparing Panchnama Ex.

P-2 for search without warrant in presence of witnesses he proceeded for search of the accused at Platform No. 2. Inspector S.S. Shukla PW-06 alongwith Police staff and 2 witnesses went to spot after recording the departure in the Rojnamchasanha to this effect. Notice (Ex. P-3) under Section 50 of the NDPS Act was given to the accused for search that he may get the search through Gazetted Officer or the Magistrate or by any other Police Officer. The accused consented for search by the Police vide Ex. P-6. Thereafter, PW-06 S.S. Shukla, gave search of himself and the Police Staff with witnesses by the accused vide Ex. P- 4 on which nothing objectionable was recovered from them. After search of the accused Ganja like substance was recovered from him which was kept in a bag. The said substance was identified to be Ganja by rubbing and smelling. Weighing Panchnama was prepared vide Ex. P-5 and it was found to be 4 KG. Out of the said Ganja 2 samples of 50-50 grams were drawn and sealed and seizure memo Ex. P-8 was prepared. The seized Contraband was deposited in Malkhana by Inspector S.S. Shukla and acknowledgement was obtained vide Ex. P-12. The accused was arrested vide Ex. P-7, intimation of his arrest was sent to his father vide Ex. P-18. FIR Ex. P-14 was registered under Crime No. 177/2010 under Section 20 of NDPS Act and the information regarding the entire proceedings was forwarded to the Special Court (NDPS) vide Ex. P16 and S.P. (Rail) Raipur vide Ex. P-17, the samples were sent for Chemical Examination to FSL Raipur vide Ex. P-10 from where report Ex. P-19 was received confirming the Contraband to be Ganja. After recording statements of witnesses and completion of investigation charge sheet was filed against the accused/ appellant under Section 20 of NDPS, Act.

- 4) The Trial Court framed charge against the accused/appellant under Section 20(b)2(B) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Budhram, PW-02 Sidheram Bhagat

(Constable GRP), PW-03 Dhaneshwar Tandon (Constable GRP), PW-04 Mahendar Ram (Head Constable), PW-05 Rajendra Singh (Head Constable GRP), PW-06 S.S. Shukla (Inspector GRP) and PW-07 Mahesh Jagne. The 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 and pleaded innocence and false implication. No Defence witness was examined by the accused in his defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned in para 2 of this judgment.
- 7) Learned counsel for the appellant submits that there is total non-compliance of mandatory provisions of NDPS Act. There is no independent witness who supported the prosecution case. The prosecution has failed to prove offence against the appellant, accused was falsely implicated due to ticket dispute with the GRP Police, therefore, learned Trial Court has wrongly convicted the appellant and not properly appreciated the evidence available on record, therefore, appeal may be allowed. Only on the basis of evidence of the Investigating Officer and other Police staff who were interested in the case, conviction of the accused cannot be sustained.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that there is no enmity of the appellant with the Investigating Officer and other witnesses of the Police squad. There is no reason to disbelieve the Investigating Officer in this case and strict compliance of the mandatory provisions of the NDPS Act has been done by the Investigating Officer. The Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

- 9) Heard counsel for the parties and perused the material available on record.
- 10) It is not disputed by the appellant and the respondent counsel that as per FSL report Ex. P-19 the articles sent for chemical analysis were found to be Ganja.
- 11) It is also not disputed by the respondent/State counsel that PW-01 Budhram and PW-07 Mahesh Jagne, independent witnesses have turned hostile and not supported the prosecution at any stage of examination but they admitted their signatures on documents Ex. P-1 to Ex. P-8.
- 12) The conviction is based on the evidence of PW-02 Sidheram Bhagat (Constable GRP), PW-03 Dhaneshwar Tandon (Constable GRP), PW-04 Mahendar Ram (Head Constable), PW-05 Rajendra Singh (Head Constable GRP) and PW-06 S.S. Shukla (Inspector GRP).
- 13) As per PW-06 S.S. Shukla (I.O.) he admitted in his para 1 to 5 that he received secret information from informer as per Ex. P-1 that three persons of age 25-30 years are carrying Ganja in three different bags and travelling in Train No. 8518 in down Like Express to Bilaspur. After recording the same in the Rojnamchasanha Ex. P-2 he went for search of appellant alongwith his staff and independent witnesses after preparing Panchnama for search without warrant (Ex. P-2). Thereafter, immediately he reached along with his staff and witnesses at Platform No. 2 and as per Ex. P-3 notice was given to the accused for search and after obtaining consent of accused search of his bag was made vide Ex. P-6 and approximate 4 KG Ganja was recovered as per Ex. P-5. The substance recovered from the appellant was identified to be Ganja by rubbing and smelling. Out of the said Ganja 2 samples of 50-50 grams were drawn and sealed and seizure memo Ex. P-8 was prepared. The seized Contraband was deposited in Malkhana by Inspector S.S. Shukla and acknowledgement was obtained vide Ex. P-12. The accused was arrested vide Ex. P-7, intimation of his arrest was

sent to his father vide Ex. P-18. FIR Ex. P-14 was registered under Crime No. 177/2010 and the information regarding the entire proceedings was forwarded to the Special Court (NDPS) vide Ex. P16 and S.P. (Rail) Raipur vide Ex. P-17, the samples were sent for Chemical Examination to FSL Raipur vide Ex. P-10 from where report Ex. P-19 was received confirming the Contraband to be Ganja. There is no any reason to disbelieve the evidence of PW-06 S.S. Shukla who is I.O. in this case.

- 14) PW-02 Sidheram Bhagat (Constable GRP) has stated that he had given the secret information (Ex. P-1) and the Panchnama for search without warrant (Ex. P-2) on 07/11/2010 to the reader of D.S.P., Rail Raipur. He has duly proved the same.
- 15) PW-04 Mahendar Ram (Head Constable) has admitted that he received the documents of Ex. P-1 and Ex. P-2 on 07/11/2010 and proved the same.
- 16) PW-05 Rajendra Singh (Head Constable) also proved this fact that the seized article was kept in safe custody as per Ex. P-12. There is no reason to disbelieve the statement of PW-05, looking to the fact that his entire evidence is uncontroverted in cross-examination.
- 17) Definitely PW-01 Budhram and PW-07 Mahesh Jagne have turned hostile and not supported the prosecution case but both of them have admitted their signatures on the documents Ex. P-1 to Ex. P-8. Looking to the evidence of PW-06 S.S. Shukla (I.O.) there is no reason to disbelieve this Investigating Officer. The defence counsel has not brought on record anything to show that the Investigating Officer was having any ill will or enmity with the accused/appellant for his false implication in this case. During cross-examination of the witnesses also no such suggestion has been put to them that the Investigating Officer was inimical to the accused/appellant.
- 18) True it is that in this case the independent witnesses have not supported the prosecution case and conviction of the appellant

is based on the evidence of official witnesses. It is well settled principle of law that a Police Officer can or cannot be a sole eye witness 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.

- 19) 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 trustworthy, 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. **[AIR 2013 Supreme Court 3344, Pramod Kumar V. State (GNCT) of Delhi.]** The same principle of law has been reiterated by the Supreme Court in the matter of **Baldev Singh Vs. State of Haryana reported in (2015) 17 SCC 554** 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 scrutinized and

independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

- 20) In the recent judgment dated 26/10/2020 delivered by the Hon'ble supreme Court in the matter of ***Rajesh Dhiman Vs. State of Himachal Pradesh in (CRA No. 1032 of 2013)*** and ***Gulshan Rana Vs. State of Himachal Pradesh in (CRA No. 1126 of 2019)***, where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the Trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would not ipso facto be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.
- 21) In the present case, though the independent witnesses PW-01 Budhram and PW-07 Mahesh Jagne not supported the prosecution case but they have admitted their signatures on the documents Ex. P-1 to Ex. P-8. The Police witnesses PW-02 Sidheram Bhagat (Constable GRP), PW-03 Dhaneshwar Tandon (Constable GRP), PW-04 Mahendar Ram (Head Constable), PW-05 Rajendra Singh (Head Constable GRP) and PW-06 S.S. Shukla (Inspector GRP) have unequivocally stated about search and seizure of the contraband. As per evidence available on record, 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 witness. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

- 22) The Trial Court in the impugned judgment had elaborately dealt with the compliance of the mandatory provisions of the NDPS Act by the Police witnesses while conducting search and seizure proceedings. Thus considering the unrebutted oral and documentary evidence available on record does not find any illegality or perversity in the finding recorded by the Trial Court. The submission of the learned counsel for the appellant that conviction cannot be based on the evidence of official/Police witnesses is also of no consequence in view of the aforesaid cited judgments of the Hon'ble Supreme Court.
- 23) On the basis of aforesaid discussions this Court is of the opinion that there is no substance in the appeal filed by the appellant. Accordingly, the appeal is dismissed. As per jail report dated 16/17th October 2020 submitted by Jail Superintendent, Central Jail, Raipur, the appellant has been released from jail on 24/11/2012 after completion of sentence including the fine sentence. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant