NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 969 of 2019

Reserved on : 16.12.2019

Delivered on : 06.02.2020

1. Banti Sakya, S/o Gopal Sakya, aged about 41 years, R/o Village- D.D. Nagar, Bidi Colony, Police Station- Maharajpura, District- Gwalior (M.P.)
2. Pawan Kumar Mahawar, S/o Gangaram Mahawar, aged about 30 Years, R/o Village- D.D. Nagar, Bidi Colony, Police Station- Maharajpura, District- Gwalior (M.P.)
3. Sidheshwar Nayak, S/o Kala Nayak, aged about 66 years, R/o Village- Sittiguda, Police Station- Navagaon, District- Phalwani (Odisa)

---- Appellants

Versus

State of Chhattisgarh, Through: Station House Officer, Police Station- Komakhan, District- Mahasamund (C.G.)

---- Respondent

For Appellants : Mr. Vikash Pradhan, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.05.2019 passed by Special Judge (NDPS Act), Mahasamund (C.G.) in Special Criminal Case (NDPS Act) No. H-30/2017, wherein the said court convicted all the appellants for commission of offence under Section 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the Act, 1985”) and sentenced to undergo R.I. for 3 years and fine of Rs. 10,000/- each with further default stipulations.

2. As per case of the prosecution, on 25.07.2017, in-charge of Police

Station- Komakhan received secret information about possession of contraband article ganja by the appellants. After complying with all the legal formalities, bus bearing registration No. CG-04 E-2889 was searched and bag containing contraband article was found in possession of the appellants which was weighed and it was found to be 11 kg. 200 grams. The matter was investigated, appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) The independent witnesses have not supported version of the prosecution, but the trial court failed to appreciate this aspect of the matter.

(ii) The provisions of Section 50 and other relevant provisions have not been complied with, therefore, case of the prosecution is not established.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. Learned counsel for the appellants placed reliance in the matter of **SK Raju @ Abdul Haque @ Jagga** Vs. **The State of West Bengal (CRA No. 459 of 2017 in Supreme Court)**, **Gorakh Nath Prasad Vs. State of Bihar** reported in **AIR (SCW) 2018 0 704** & **Arif Khan @ Agha Khan Vs. State of Uttarakhand (CRA No. 273 of 2007 in Supreme Court)**.

5. On the other hand, learned State counsel submits that the finding

arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the records.

7. First question for consideration before this Court is whether the appellants were in possession of contraband article ganja. To substantiate the charge, the prosecution examined as many as 10 witnesses. Laxminarayan Patro (PW-6) is Conductor of the bus bearing registration No. CG-04 E-2889. As per version of this witness, the bus was checked and from seat of the appellants, bags were recovered in which contraband article was found which was weighed and found to be more than 11 kg. All the appellants were possessor of the bags and they kept the same in Dicky of the bus on their asking. Version of this witness is supported by version of Sub-Inspector- Ashish Kansari (PW-10) who seized the article from the bus. As per version of this witness, two samples of 100 grams each were prepared from mixture of the seized article which was kept in safe custody of Malkhana of Police Station- Komakhan. As per version of this witness, Constable- Bhaskar Chandrakar (PW-8) received the samples from Malkhana thereafter he deposited the same to Forensic Science Laboratory for examination. Version of this witness is supported by version of Bhaskar Chandrakar (PW-8) who was Constable at Police Station- Komakhan. As per version of this witness, he received the seized article and deposited the same in Forensic Science Laboratory on 27.07.2017. Version of this witness is

supported by version of Naib Tahsildar- Gagan Sharma (PW-1) in whose presence the sample was separated and sealed and remaining article was also sealed. The case of the appellants is mere denial which is meritless.

8. Second question for consideration before this Court is whether any mandatory provision of the Act, 1985 was flouted with. As per version of Assistant Sub-Inspector- Diwakar Bisi (PW-2), report regarding seizure and search was submitted in office of Sub-Divisional Officer (Police) and he acknowledged the same as per Ex. P/3 in the said office. Version of this witness is supported by version of Constable- Preetraj Thakur (PW-4). Version of this witness is unrebutted, therefore, it is established that the information regarding search and seizure was sent to higher authorities as per provision of Section 57 of the Act, 1985 and this provision is also complied with.

9. As per version of Head-Constable- Suklal Bhoi (PW-7), he was in-charge of Malkhana of Police Station- Komakhan and he received the seized article and kept the same in safe custody of Malkhana. Version of this witness is also unrebutted and version of this witness is supported by document Ex. P/22 to P/24. From version of this witness, it is established that the seized article was kept in safe custody of Malkhana as per provision of Section 55 of the Act, 1985. The bus is searched in the present case, therefore, it is not a case of personal search where provision of Section 50 of the Act, 1985 is to be complied with.

10. On overall assessment of the evidence adduced by the prosecution,

there is nothing on record which suggest flouting of any provisions of the Act, 1985. In view of the above, arguments advanced on behalf of the appellants is not sustainable. Considering all the facts and material on record, this Court is of the view that the case laws cited by learned counsel for the appellants, are clearly distinguishable from the facts and circumstances of the present case.

11. The quantity of contraband article seized in the present case is neither small nor commercial quantity, therefore, commission of offence by the appellants falls within mischief of Section 20(b)(ii)(B) of the Act, 1985 for which the trial court convicted the appellants and their conviction is hereby affirmed.

Heard on the point of sentence.

12. Looking to the quantity of contraband article ganja, the trial court awarded jail sentence of 3 years and fine of Rs. 10,000/- to the appellants which cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.

13. The appellants are reported to be in jail, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun