

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 215 of 2015

Reserved on : 06.03.2020

Delivered on : 08.05.2020

Daitari Meher, S/o Purn Chand Meher, aged about 34 years, R/o Village-Palash, P.S. Junagarh, District- Kalahandi, Orrisa.

---- Appellant

Versus

State of Chhattisgarh, through P.S.- G.R.P., Bilaspur, District- Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. Aman Kesharwani, Advocate.

For State/respondent : Mr. Dinesh Tiwari, Dy. G.A.

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 05.02.2015 passed by Special Judge [under Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the Act, 1985")], Bilaspur (C.G.) in Special NDPS Case No. 126/2014, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(B) of the Act, 1985 and sentenced to undergo R.I. for 5 years and fine of Rs. 15,000/- with further default stipulations for having possession of contraband article ganja to the tune of 10 kg. on 27.03.2014 at 10:50 p.m. at railway platform No. 1 of Railway Station Bilaspur (C.G.)
2. As per case of the prosecution, on 27.03.2014, In-charge of Government Railway Police, Bilaspur- Sub-Inspector- S.L. Navratan

(PW-9) received information that the appellant is in possession of contraband article ganja. The said officer recorded information and sent the same to higher authorities and after complying with all the legal formalities, reached to the spot with witnesses and police personnel. On 27.03.2014 at railway platform No. 1 of Railway Station Bilaspur after search, 10 kg. of contraband article ganja was found in possession of the appellant. The matter was investigated, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

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

- (i) As per version of Prashant Verma (PW-8), no notice was served to him for weighing the seized article, therefore, weighing of seized article in his presence is not established.
- (ii) This witness has not supported version of the prosecution and other witnesses are interested witnesses, therefore, their version is not sufficient to bring home the guilt.
- (iii) In absence of independent witness, it can be inferred that the appellant has been falsely implicated in the present case.
- (iv) The bag in which the contraband article was found is not proved to be belonging of the present appellant.
- (v) 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. 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.

5. I have heard learned counsel for the parties and perused the records.
6. Sub-Inspector- S.L. Navratan (PW-9) deposed before the trial court that he received information regarding possession of contraband article ganja by the appellant and he recorded the same in Rojnamcha Sanha of Government Railway Police Station, Bilaspur as per Ex. P/24. As per version of this witness, he sent the information to Superintendent of Police (Rail), Raipur regarding proceeding without search warrant as per Ex. P/2 and P/3 and the same is recorded in Rojnamcha Sanha as per Ex. P/29 to P/31. Version of this witness is supported by version of Head Constable- Manmohan Singh (PW-2).
7. Sub-Inspector- S.L. Navaratn (PW-9) deposed that he informed the appellant as per Ex. P/12 about his right to be searched by Gazetted Officer or Magistrate, but he opted to be searched by this police officer. First police officers and witnesses were searched by appellant, but no objectionable article was found in their possession thereafter, he searched the bag which was kept in possession of the appellant and found contraband article ganja. As per version of this witness, the article was weighed and it was found to be 10 kg. 2 samples of 50 grams each were separated from the seized article and marked as A1 & A2 which was sealed and rest of the article was also sealed. The specimen seal was also prepared. This witness further deposed that the seized article was handed over to In-charge of Malkhana who kept the same in safe custody of Malkhana. The samples were sent to

Forensic Science Laboratory and as per report of the Laboratory, test of ganja was found positive as per Ex. P/39.

8. This witness produced the seized article and the samples before the trial court. Version of this witness is supported by version of Head Constable- Roop Kishore Sen (PW-3) who was In-charge of Malkhana and made entry regarding seizure of contraband article ganja in the register and kept the article in safe custody of Malkhana. As per version of this witness, he gave the samples to Constable- Jagarnath Ram Bhagat (PW-5) for submitting the same to Forensic Science Laboratory. Constable- Ganesh Ram Baghel (PW-4) deposed before the trial court that after search and seizure, he submitted the information to Superintendent of Police (Rail), Raipur. Constable- Jagarnath Ram Bhagat (PW-5) deposed that he received the samples from In-charge of Government Railway Police, Bilaspur and submitted the same to Forensic Science Laboratory for examination.
9. Information regarding search and seizure is further supported by version of Head Constable- Ramkumar Manjre (PW-6), Independent witness namely Prashant Verma (PW-8) has also supported factum of seizure. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. There is nothing on record to say that the appellant has been roped in false charge. There is nothing to disbelieve statement of all the witnesses who are eye-witness account to the incident and further who are witnesses of the procedure adopted in the present case.
10. The trial court recorded finding on the basis of relevant material

placed on record. It is not a case where the trial court recorded finding on the basis of irrelevant or extraneous material placed on record. From the evidence, it is clearly established that the appellant was in possession of contraband article ganja to the tune of 10 Kg. From evidence of all the witnesses, it is established that the provision of Sections 42, 50, 55 & 57 of the Act, 1985 has been duly complied with in the present case. In view of the above, argument advanced on behalf of the appellant is not sustainable.

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

Heard on the point of sentence.

12. The trial court awarded R.I. for 5 years for commission of offence under Section 20(b)(ii)(B) of the Act, 1985, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the factual matrix of the case. The legislature has made stringent punishment and the same has to be followed. The whole sentence part is also not liable to be interfered with.
13. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order of arrest etc. is required.

**Sd/-
(Ram Prasanna Sharma)
Judge**