

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10-01-2020

Delivered on 20-02-2020

CRA No. 901 of 2015

- Rajkumar Koli S/o Chhotelal Aged About 28 Years Motor Mechanic, Mangolpuri, Police Station - Mangolpuri, D - Block, Delhi.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station - Bhanpuri, Civil And Revenue District - Bastar Chhattisgarh.

---- Respondent

&

CRA No. 853 of 2015

- Arjun Singh S/o Suresh Chand Aged About 25 Years R/o Village Sahori, Teh. Aliganj, District Etah, Presently R/o Shahadra, Nand Nagri, Mohalla, B-5, Mansarovar Park, Delhi.

----Appellant

Versus

- State of Chhattisgarh through Police Station Bhanpuri, District Bastar Chhattisgarh.

---- Respondent

For Appellants in : Mr. Manoj Paranjpe, Advocate.
CRA No. 901 of 2015

For appellant in : Mr. D.K. Tiwari, Advocate.
CRA No. 853 of 2015

For respondent/State : Mr. Raghavendra Verma, G A.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. As both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.
2. Challenge in both the appeals is to the judgment of conviction and order of sentence dated 30-6-2015 passed by the Special Judge (NDPS Act, 1985), Jagdalpur (CG) in Special Case No. 6 of 2014 wherein the said Court has convicted the appellants for commission of offence under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act, 1985") and sentenced them to undergo RI for ten years and fine of Rs.1,00,000/- each with default stipulations for having possession of contraband article Ganja in commercial quantity.
3. As per case of prosecution on 6-2-2014 at 5.15 a.m. Sub Inspector of Police Station Bhanpuri namely B.P. Gupta (PW/14) got tip that three persons travelling in silver colour Skoda car having registration No. DL/04/NA/1833 are carrying Ganja and are coming from Jagdalpur on national highway towards Kondagaon. On the said tip, after preparation of Panchnama and after informing their senior officers, a team went to raid and stopped the said car and carried out investigation. After search, Ganja to the tune of 146 kgs and 527

grams was recovered in the said vehicle. Both appellants and another co-accused namely Rakesh Kumr were found in possession of said contraband. The matter was investigated and the appellants were charge-sheeted. After completion of trial, they were convicted as mentioned above.

4. Learned counsel for the appellants submit as under.

- I) The contraband article was not found in possession of the appellants.

5.

- ii) In the present case, Section 50 of the Act, 1985 has not been complied with because joint notice of Section 50 of the Act, 1985 is issued to all the appellants which is not permissible under the law and same is contradictory to the judgment passed by this court in the matter of **Avinash Singh Rajput vs. State of Chhattisgarh in CRA No. 222 of 2014.**
- iii) Once the notice under Section 50 of the Act, 1985 is issued for searching of the vehicle and personal search, then

mandatory provisions of Section 50 of the Act, has to be complied with, but in the present case same is not complied with.

- iv) Prosecution failed to to prove as to who gave the consent commonly for all the persons found in the vehicle, therefore, it is not a compliance of Section 50(5) (6) of the Act, 1985.
- v) In the present case, witnesses of seizure and search have not supported the version of prosecution, therefore, case of the prosecution is doubtful.
- vi) The trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

5. 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.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. Sub Inspector of Police Station, Bhanpuri namely B.P. Gupta (PW/14), deposed before the trial court that after receiving tip on 6-2-2014 at about 5.15 a.m., regarding transport of illegal contraband article Ganja in white colour car bearing registration No. DL 4-C-1833, he recorded information in Rojnamcha Sanha as per Ex.P/44 and two independent witnesses namely Munnalal Chuhan and Bigneshwar Thakur were called by the Constable Prem Prakash Bada (PW/4). He has informed to his superior officer i.e., Sub Divisional Officer (Police) Bhanpuri, Jagdalpur regarding transporting of illegal contraband Ganja vide information as per Ex.P/46 and same was registered in Rojnamcha Sanha vide Ex.P/47. As per version of this witness, he rushed to the gate of the Police Station Bhanpuri with independent witnesses and police personnel and at about 6.15 a.m., in the morning he stopped Skoda Car bearing registration No. DL 4-C-NA-1833 in which three persons were sitting, out of them two are appellants and one other co-accused is Rakesh Kumar. As per version of this witness, he issued notice to appellants as per Section 50 of the Act, 1985 regarding their right to be searched by Gazetted Officer or Magistrate vide Ex.P/4 but they consented to be searched by this Police Officer and thereafter this police officer and other two independent witnesses were searched by the appellants and no objectionable articles

were found. As per version of this witness, when car of the appellants was searched, contraband article Ganja was found. The contraband articles were identified as Ganja which was weighed in a electronic balance which had capacity to weight upto 15 kgs. 80 packets of polythene packets were found in the vehicle and after weighing it was found to be 146 kgs and 527 grams. From all the 80 packets, two samples of 25 grams each were separated which comes out to 160 samples and remaining articles were sealed by him. Again he sealed the sample packets in which he and the appellants signed. He also made specimen seal in the said samples. As per version of this witness, after coming to Police Station seized articles were handed over to In charge of Malkhana namely Head Constable Tengaliram Kashyap (PW/13) who received the same and deposited. All the samples were marked separately in Hindi starting from A-1 and ended upto D-1 to D-3. As per version of this witness, pre-trial disposal of seized articles were conducted by C.L. Otee who is Tahsildar and Executive Magistrate (PW/10). Version of this witness is supported by the said Executive Magistrate. Samples were deposited by Constable Rajesh Sinha (PW/6) in FSL, Raipur. As per version of this witness, he deposited the samples in FSL and received acknowledgement which is recorded as Ex.P/28. Version of B.P. Gupta (PW/14) is supported by version

of Head Constable Tingaliram Kashyap (PW/13) who is Incharge of Malkhana and deposited 180 sample packets and rest of the articles weighing 146 kgs and 527 grams. Entry is made in property register of Malkhana as per Ex.P/43 and acknowledgement was given by this witness as per Ex.P/42. Factum of seizure is supported by version of PW/8 Bhikuram Kashyap in whose presence 80 packets were found in the vehicle and after weighing it was found to be 146 kgs and 527 grams. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. Oral statement is supported by documentary of seizure Ex.P/16 and weighing Panchnama Ex.P/15.

8. Learned counsel for the appellants submit that it is not clear as to who gave consent for searching by Investigating Officer B.P. Gupta (PW/14) therefore, Section 50 of the Act, 1985 is not complied with in the present case.

9. Ex.P/4 is a notice under Section 50 of the Act 1985 given by the Police Officer B.P. Gupta (PW/14). In this document all three persons, two appellants and other co-accused Rakesh have signed in which it is mentioned that they gave consent to be searched by this Police Officer and thereafter this officer made search of the appellants, therefore, it is not a case where

appellants have not been provided opportunity regarding their right as envisaged under Section 50 of the Act, 1985. It is not a case of personal search, but it is a case of search of vehicle. The entire contraband was found in the said vehicle and seized from the said vehicle. For search of vehicle, Section 50 of the Act, 1985 has no application. In the present case, Police Officer has provided opportunity to the appellants as per Section 50 of the Act, 1985 but from the evidence it is clear that quantity of contraband was huge and it was not attached with the body of the appellants. There is nothing on record to say that the said Investigating Officer has flouted with the provisions of Section 50 of the Act, 1985, therefore, argument advanced on behalf of the appellants is not sustainable and the case laws cited on their behalf are distinguishable in the facts and circumstances of the present case. From the entire evidence, it is established that appellants were possessors of the vehicle and and possessor of the articles in the said vehicle.

10. The question for consideration of this court is whether any provision of the Act, 1985 is flouted with in the present case. The information regarding proceeding of the case is given to superior officer who is Sub Divisional Officer (Police) which is compliance of Section 42 of the Act, 1985. Appellants have been provided opportunity as per Section 50 of the Act, 1985 which is due

compliance of said provision. After seizure all the contraband articles were kept in safe custody of Malkhana as per provisions of Section 55 of the Act, 1985. As per version of Head Constable Prabha Sahu (PW/15), it is established that he was working in the office of Sub Divisional Officer (Police) Bhanpuri and received information regarding whole proceeding of search and seizure in the said office which is compliance of Section 57 of the Act, 1985.

11. From the entire evidence, there is nothing to say that the appellants have been roped in a false charge. There is nothing to disbelieve testimony of all the police officers who deposed regarding search and seizure. True it is that Munnalal (PW/2) and PW/3 Vigneshwar Thakur have not supported the version of prosecution, but their version is not sufficient to reject the testimony of all the Police Officers. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After re-assessing the entire evidence, this court has no reason to take a contrary view what is recorded by the trial court.

12. 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 about 146 kgs and 527 grams which is huge commercial quantity, therefore, the case of

the appellants squarely falls within offence of Section 20(b)(ii)(C) of the Act, 1985 for which the trial Court has convicted the appellants. The trial court awarded sentence of ten years and fine of Rs.1,00,000/- each which is minimum sentence and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

13. Accordingly, both appeals are liable to be and are hereby dismissed. Both appellants are reported to be in jail, therefore, no further order for their arrest is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju