NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 17.02.2020

Delivered on 08.05.2020

Criminal Appeal No.1155 of 2015

Sangeeta Das @ Savita Das, Wife of Hinadas Jena, aged about 23 years, R/o. Hijli Kat, District Ganjam (Orissa)

---- Appellant

Versus

State of Chhattisgarh, through the Incharge GRP Raipur, District Raipur (CG)

---Respondent

For the appellant : Shri Chandra Bhushan Kesharwani, Advocate

For the respondent/State : Smt. Shubha Shrivastava, Panel Lawyer

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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 31.10.2014 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act 1985'), Raipur (C.G.) in Special Criminal Case No. 240/2014, wherein the said court convicted the appellant for commission of offence under Section 20(b)(ii)(C) of the Act, 1985 and sentenced to undergo R.I. for 10 years and fine of Rs. 1,00,000/- with default stipulations.

2. As per case of the prosecution, on 12.01.2014, Police Officer- Shankar Chandrakar, In-charge of Government Railway Police, Raipur received information that two persons carrying contraband article ganja are traveling in train Ahmedabad Express. On the basis of said information, the Police Officer with other staff reached to the spot and recovered ganja to the tune of 38 Kg. from the appellant. After complying with all the legal formalities, the matter was investigated, 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) The appellant was not given any option as per Section 50 of the Act, 1985, therefore, she has been deprived of valuable right, hence, her conviction is not sustainable.

(ii) The independent witnesses have not supported version of the prosecution, therefore, version of the Police Officer is not dependable.

(iii) There is major contradiction and omission in statement of the Police Officer, therefore, his version is not liable to be acted upon.

(iv) 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. First question for consideration before this Court is whether the appellant was in possession of contraband article ganja to tune of 38 Kg. Inspector Shankar Chandrakar (PW-8) deposed before the trial Court that he was posted as Incharge of Govt. Railway Police, Raipur in the month of April, 2013. He received information on 12.01.2014 that one male and one female are carrying contraband article ganja in suitcase and they are traveling in general Bogie of train Puri-Ahmedabad Express. As per version of this witness, Panchanama (Ex.P/3) was prepared by him in this regard and he also prepared Panchnama regarding search without warrant as per Ex.P/4. As per the version of this witness, the information was sent as per Ex.P/3 & P/4 to Deputy Superintendent of Police Railway, Raipur. He gave notice under

Section 50 of the Act, 1985 to the appellant, but she did not opt to be taken before the nearest Gazetted Officer or to the nearest Magistate, thereafter, he searched the appellant.

7. In the present case, investigating officer is Inspector Shankar Chandrakar (PW-8). As per the version of this witness, he made search on the appellant and found contraband article ganja in her possession. Notice under Section 50 of the Act, 1985 is prepared by Shankar Chandrakar (PW-8) as per Ex-P/5. Seizure memo is prepared by the same officer as per Ex-P/9 who is a male officer. There is nothing on record to show that any female official has made search on the appellant who is a female. There is nothing on record to show that seizure is made by female officer.

8. Now the point for consideration of this Court is whether the search and seizure of female suspect is permissible by a male police official. In the matter of **State of Punjab vs. Baldev Singh** reported in **(1996) 6 SCC 172**, it is held that while conducting search and seizure, in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the NDPS Act are also required to be followed. Section 50(4) of the NDPS Act lays down that no female shall be searched by anyone excepting a female. This provision is similar to the one

contained in Section 52 of the CrPC, 1898 and Section 51(2) of CrPC 1973 relating to search of females. Section 51(2) of the CrPC, 1973 lays down that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. The empowered officer must, therefore, act in the manner provided by Section 50(4) of the NDPS Act read with Section 51(2) of CrPC, 1973 whenever it is found necessary to cause a female to be searched. The document prepared by the investigating officer at the spot must invariably disclose that the search was conducted in the aforesaid manner and the name of the female official who carried out the personal search of the female concerned should also be disclosed. The personal search memo of the female concerned should indicate compliance with the aforesaid provisions. Failure to do so may not only affect the credibility of the prosecution case but may also be found as violative of the basic right of a female to be treated with decency and proper dignity. In the matter of **State of Punjab vs. Surinder Rani alias Chhidi** reported in (**2000) 10 SCC 429** it is held that requirement of Section 50(4) of the Act 1985 is that on search of female, prohibiting anyone, except a female is mandatory and it cannot be diluted even on the ground of non-availability of a female at the time of search. In the present

case there is nothing on record that the the appellant who is a female was searched by any female officer, therefore, search is vitiated and the same is apparent violation of Section 50(4) of the Act 1985. There is nothing on record to establish the charges against the appellant.

9. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Section 20(b)(ii)(C) of the Act 1985. The appellant is reported to be in jail. She be set at liberty forthwith if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
JUDGE

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