

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25.02.2020

Delivered on 08.05.2020

CRA No. 1389 of 2015

Gopal Choudhary S/o Ram Choudhary Aged about 40 years R/o Barauni, P.S. Fulvariya, District- Baigusrai, Bihar. ---- **Appellant**

Versus

State of Chhattisgarh Through P.S. G.R.P. Bhilai - 3, Civil And Revenue District- Durg, Chhattisgarh. ---- **Respondent**

For appellants	: Mr. M. Asha, Advocate on behalf of Mr. A.L. Singroul, Advocate
For State	: Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 14.07.2015 passed by Special Judge (N.D.P.S.), Durg (C.G.), in Special(N.D.P.S.) Case No.01/2015 wherein the said Court has convicted the appellant for charge under Sections 20(b) (ii) (b) of Narcotic Drugs and Psychotropic Substances Act, 1985(for short 'the Act, 1985") and sentenced him to undergo R.I. for 5 years with fine Rs. 25000/- with default stipulation.
2. As per version of the prosecution on 6th of December, 2014 Station House Officer (PW-9) Rajkumar Borjha received secrete information from informer that a person aged about 35-40 years was traveling in train (Chhattisgarh Express) in general Coach having possession of contraband article *Ganja*, thereafter S.H.O. called two independent witnesses, prepared *Mukhbir Suchna*, registered information in *Rojmoncha Sanha* and conducted raid party. This information was reduced in writing and same was sent to the higher authority thereafter,

this officer rushed to the spot with the witnesses and in the said raid contraband article *Ganja* was recovered from the appellant and on weighed it was found 5 kg. Two sample of 50-50 gram were prepared from the seized contraband article which were marked as A-1, A-2. Each sample of contraband article was sealed and rest of the article was also seized and sealed. The matter was investigated and the appellant was charge-sheeted. After completion of trial, Court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits that independent witnesses have not supported the version of the prosecution therefore, version of the prosecution is not reliable. The investigating officer has not complied with the provisions of Sections 50, 42, 55 & 57 of the Act, 1985 and article was not found in exclusive possession of the present appellant therefore, finding of the trial Court is liable to set aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The police inspector Rajkumar Borjha (PW-9) deposed before the trial Court that he had received information on 6th of December, 2014 from *Mukhbir* that one person who was traveling in possession of contraband article *Ganja* in Chhattisgarh Express's General Coach. This information was reduced in writing in *Rojnamcha Sanha* as per Ex.P-22 and this information was sent to the Superintendent of Police as

per Ex.P-23. Two independent witnesses namely Prakash Tandi and Bahadur Singh Kaiwartya were called thereafter they rushed to the spot with police personnel and with physical balance. As per version of Rajkumar Borjha (PW-9) he searched the bag of the appellant and before searching he issued a notice that appellant may have option to be searched by either Gazetted officer or by Magistrate and the appellant opted to be searched by this officer. Thereafter, the appellant is searched by the said police officer the appellant raised no objection and contraband article was found from the possession of the appellant from his bag. The article was weighed and it was found to be 5kg, two samples of 50-50gm each were prepared and named it as A-1, A-2 thereafter, specific seal was also made as "S O GRP Bhilai" and packets were sealed. As per version of this witness seized article were handed over to the in-charge of Malkhana namely Head Constable, (91) Dilip Pandey (PW-7). He further deposed that information regarding search and seizure was sent to the Superintendent of Police and samples were sent to forensic science laboratory through memo of Superintendent of Railway Police by the Ramkumar Dewangan. Seized articles were produced before the trial Court during the evidence. The version of this witness is supported by version of Dilip Pandey (PW-7) who is in-charge of malkhana of GRP police station Bhilai who received the seized articles and deposited it in malkhana. Version of this witness is supported by version of the constable Ram Kumar Dewangan (PW-5) who took the samples from malkhana and after submission of samples in

forensic laboratory received receipt of the same which is Ex.P-17.

6. All these witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the defence. From the entire evidence, it is established that article was seized from possession of the appellant which was sent for examination and test of Ganja was found positive, as per laboratory report Ex.P-35. From the evidence of the Prakash Tandi (PW-1), Bahadur Singh Kaiwartya(PW-2), Bhushan Kumar Sinha (PW-3) and Manmohan Singh (PW-6) It is established that information was sent to higher authorities as per provisions of the Section 42 of the Act,1985. From the evidence of inspector Rajkumar Borjha (PW-9), B. Babulal (PW-8) and Prakash Tandi (PW-1) it is established that appellant was provided opportunity to be searched by Magistrate or Gazetted Officer as per provision of the Section 50 of the Act, 1985. From the evidence Prakash Tandi (PW-1) the seized articles were sent for safe custody to malkhana. In compliance of Section 55 of the Act, 1985 from the evidence of Constable Likhan Ram (PW-4), it is established that search and seizure was informed to Superintendent of Police as per Section 57 of the Act, 1985, therefore, argument advanced on behalf of the appellant is not sustainable.
7. From overall assessment of the entire evidence, it is clear that the appellant was in possession of the contraband article Ganja. As per notification, the small quantity of ganja is 1 k.g, whereas the commercial quantity is 20 kg. The quantity of

contraband article seized in the present case is more than 1 kg. Which 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 and deterrent punishment is required under the Act, 1985 for which the trial court convicted the appellant and the same is hereby affirmed. The trial Court awarded sentence of 5 years which cannot be termed as harsh, disproportionate or unreasonable.

8. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is reported to be in jail therefore, no further order for his arrest etc is required.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle