

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10.01.2020

Delivered on 12.02.2020

Criminal Appeal No.1292 of 2017

1. Chhunu Lal Patel S/o Narayan Patel, Aged About 30 Years R/o Bhakuri Nayapara, Police Station Takhatpur, District Bilaspur, Chhattisgarh.
2. Dilip Kumar Dhru S/o Shankar Dhru, Aged About 26 Years R/o Ranigao Ratanpur, P. S. Ratanpur, District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station Saraipali District Mahasamund, Chhattisgarh.

---Respondent

For the appellant : Ku. Shivali Dubey, Advocate
 For the respondent/State : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 19.7.2017 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act 1985'), Saraipali Distt. Mahasamund (Chhattisgarh) in Special Criminal Case No. 22/2016 wherein the said Court convicted the appellants for commission of offence under Section 20(b)(ii)(C) of the Act, 1985 and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- each with default stipulations.

2. As per the version of the prosecution, on the date of incident, i.e. 12.10.2015, Town Inspector namely KB Dwivedi along with police staff and witnesses went to National Highway 53 at village Murmuri Square for checking the vehicles. While checking the suspected vehicles, at about 13.10 hours one white colour Scorpio bearing registration No.CG 10G 8800 was coming from Orissa side. Driver of the said vehicle tried to escape then police caught both appellants sitting in the vehicle and in the said car four plastic bags at the backseat was found. In all bags total 103 kg of ganja in the form of 1 kg of 103 packets was found. After legal formalities, both the appellants were arrested, charge sheeted and after completion of trial, both were convicted and sentenced as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) As per the version of Town Inspector KB Dwivedi (PW-6) contraband article ganja was seized from Scorpio vehicle and the same was weighed and found to be more than 102 kg, but his version is not supported by other witnesses, therefore, finding of the trial Court is not proper.

(ii) The trial Court has ignored the mandatory provisions of Act, 1985 which are Sections 42(1), 42(2), 50, 52 & 55 and the same has not been complied in the present case, therefore, conviction of the appellants is not sustainable.

(iii) In the FSL report, it was not found that the packets were sealed, therefore, it is not proved that the seized articles were sent for examination.

(iv) The trial Court has not evaluated the evidence properly, therefore, conviction recorded by the trial Court is not sustainable.

4. On the other hand, learned counsel for the State while supporting the impugned judgment would submit that all the provisions of the Act are duly complied with and seizure from the appellants also proved before the trial Court, therefore, it is not a case where interference of this Court is required with the judgment of the trial Court.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. Town Inspector KB Dwivedi (PW-6) deposed before the trial Court that he was searching the vehicles on 12.10.2015 at village Murmuri Square in National Highway 53 and at about 13.10 hours one Scorpio bearing registration No. CG10 G 8800 came from Orissa side and when they asked to stop the vehicle, driver of the vehicle moved ahead, then they stopped the said vehicle in which both the appellants were sitting. Both have admitted that they are having ganja in the vehicle. This information was sent to his superior officer, Saraipali as per Ex-P/22. He also informed the appellants about their rights to be searched by any Gazetted Officer or Magistrate, but they gave consent to be searched by this police officers and before that all the police officers and witnesses searched, but no article was found from them. Thereafter Scorpio vehicle was checked in which four bags were found. In the first bag 28 packets, in the second bag 25 packets,

in third bag 25 packets and in fourth bag 25 packets ganja was found and after weighing each packet, it was found to be 1 kg and in all it is found to be 103 kg. The entire seized articles were mixed properly and thereafter two samples of 100 gm each were separated from the mixed article which was marked as A1 & A2 and rest of the articles were again packed which was 102.800 kg. As per the version of this witness seized articles were deposited in the Malkhana of the police Station for safe custody and the samples were sent to Forensic Science Laboratory for examination. Report of the laboratory was received as per Ex-P/29 and as per the report test of ganja was found positive in both A1 & A2. Version of this witness is supported by version of Head Constable Baliram Singh (PW-4) to whom two samples and rest of the articles weighing 102.800 Kg were handed over and the same was deposited in the Malkhana for the safe custody and acknowledgment of the same was received. As per the version of Inspector Pramesh Dhruw (PW-7), panchnama regarding seized articles were prepared in the presence of the Executive Magistrate.

7. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. From the evidence, it is clear that ganja was seized as mentioned above from the Scorpio vehicle which was in exclusive possession of both the appellants.

8. As per the version of Shoukial Thakur (PW-8), Reader of the O/o. Sub Divisional Officer (P), he received information on

12.10.2015 regarding seizure of ganja and after receiving the information, he gave acknowledgment as per Ex-P/22. This witness further deposed that after search and seizure, the information was received by his office and acknowledgment was given as per Ex-P/27. From the evidence of this witness it is clear that information regarding search and seizure was received by superior officer and the same is in compliance of Section 57 of the Act, 1985.

9. From the evidence of Inspector KB Dwivedi (PW-6) it is established that notice regarding personal search was given to the appellants as per provisions of Section 50 of the Act, 1985. Though it is a search on vehicle and it is not a search of persons, provisions of Section 50 of the Act, 1985 is not applicable in the present case but said provision is also complied.

10. Again seized articles were kept in the safe custody of Malkhana as per provisions of Section 55 of the Act 1985. As the information was not received before the search but during the search of the vehicle in the village square, the contraband articles were found in the vehicle of the appellants, Section 42 of the Act, 1985 has no application in the present case. As nothing is flouted in the present case by the authority, arguments advanced on behalf of the appellants are not sustainable.

11. Ganja of 1 KG is small quantity while ganja of 20 Kg is more than the commercial quantity. In the present case seized article is 103 kg ganja which is commercial quantity. Therefore, act of the appellants falls within mischief of Section 20(b)(ii)(C) of the Act,

1985. There is nothing on record to say that the appellants have been roped for false charges on account of grudge or otherwise. Therefore, provisions adopted by the authorities inspire confidence. It is proved that 103 kg of contraband article ganja was seized from the appellants for which the trial Court has rightly convicted them and the same is hereby affirmed.

12. Heard on the point of sentence:

The trial Court awarded sentence of 10 years to each appellants, which is the minimum sentence prescribed for the said offence. Less than minimum cannot be awarded. Therefore, sentence part is also not liable to be interfered with.

13. Accordingly, the appeal is liable to be and is hereby dismissed. The appellants are reported to be in jail, therefore, no further order for their arrest etc. is required.

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