

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1835 of 2019**

- Bhubne Naik S/o Bankumar Naik, Aged About 33 Years
R/o Village Badpudagud, P.S. Ampani, District- Kalahandi,
Odisha

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Gariyaband,
District- Gariyaband, Chhattisgarh

---- Respondent

 For the appellant :Ms. Pushpa Dwivedi, Advocate
 For the Respondent/State :Mr. Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****13.01.2020**

1. The appeal is preferred against judgment dated 01.10.2018 passed by the Special Judge, Raipur, District- Raipur, C.G., in Special N.D.P.S. Case No.154/2017 wherein the said Court convicted the appellant for commission of offence under Section 20(B)(ii)(b) of N.D.P.S Act, 1985 (In short 'the Act, 1985') and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs.20,000/- with default stipulation.
2. As per the version of the prosecution, on 05.05.2017, the Assistant Sub-Inspector of police namely, Sanjay Marawi (P.W.-4) and staff proceeded to city, Gariyaband for the purpose of searching the crime and during that period, it is informed to them that appellant is coming from bus

having contraband article ganja. Information was recorded on same day and the appellant was informed about his right to be searched by Magistrate or Gazetted officer but the appellant gave consent to be searched by the said police officer. On search, contraband article ganja was found and after weighing, it was found to be 8 kg. After legal formalities, the appellant was charge-sheeted and convicted as mentioned above.

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

The independent witnesses have not supported version of prosecution and evidence of police officer is also contradictory in nature and same is not dependable. The trial Court has overlooked that provisions of the Act, 1985, which has been flouted in the present case and did not appreciated the evidence properly. Therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supports the entire judgment that the finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking the jurisdiction of appeal.

5. Sanjay Marawi (P.W.-4) deposed before the trial Court that he received information about the possession of contraband article by two persons. He prepared a panchanama as per Ex.P/27 and information was sent to his Superior office as per Ex.P/28.

6. Version of these witnesses is supported by version of constable- Tikeshwar Kumar Amrit (P.W.-5), who was reader of the officer of Sub-Divisional Officer, Police Station, Gariyaband. The evidence of both the witnesses is unrebutted during the cross-examination and looking to their evidence and documents in support of their versions, it is established that provisions of Section 42 of the Act, 1985 was complied with in present case.
7. From the version of Sanjay Marawi (P.W.-4), it is established that appellant has been informed about his right to be searched by Magistrate or Gazetted officer and this appellant gave consent to be searched by the said officer. All the police personnel present were searched, but no objectionable article was found in their possession. Thereafter, appellant was searched and one school bag was found in his possession, in which contraband article was kept in a polythene bag. Prima-facie, it was appearing to be ganja, thereafter, the same is weighed in electronic instruments and it was found to be 8 Kg. Two samples of 100 gram each were separated from the article and it was sealed on the spot and the remaining article was also sealed then both the samples were deposited in Malkhana of the said police station.
8. Version of this witness is supported by version of Assistant Sub-Inspector, Sunit Kumar Bhoi (P.W.-9), who proved Malkhana register and deposited article in Malkhana

as per seizure he further deposed regarding disposal of property by executive Magistrate.

9. Constable- Om Prakash (P.W.-6) deposed that he deposited two sample in forensic science laboratory as per Ex.P/36. The report was received as per Ex.P/38 in which test of Ganja was found positive.

10. Version of police officer is supported by version of Prem Sonwani (P.W.-2), who corroborated seizure of ganja from appellant, therefore, argument on behalf of the appellant that seizure was not proved is not sustainable. Appellant was provided opportunity to be searched by Magistrate or gazetted officer and provisions of Section 50 of the Act, 1985 has been complied with. Again seized article were kept in safe custody of Malkhana, therefore, provisions of Section 55 of the Act, 1985 is also complied with. From the evidence of Sanjay Marawi, Tikeshwar Kumar Amrut (P.W.-5), it is established that whole information regarding search and seizure was received as per Ex.P/35 in the office of Sub-Divisional Officer, Gariyaband.

11. Looking to their evidence, it is established that information regarding search and seizure was sent to higher officer which is in compliance of the Section 57 of the Act, 1985. Looking to the entire evidence which is unrebutted the argument advance on behalf of the appellant is not sustainable as provisions of the Act, 1985 complied with.

The act of the appellat falls within the mischief of Section 20(B)(2)(ii) of the Act, 1985 for which the appellant has rightly been convicted by the trial Court. The trial Court awarded sentence of three years which cannot be termed as harsh, disproportionate or unreasonable and the sentence is not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed. The appellant is in jail, no further order for his arrest etc. is required.

12. Accordingly, the appeal is dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Monika