

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1921 of 2019**

- Harishanker S/o Chedu Ram, aged about- 36 years, Caste Dhanwar, R/o- Jurali, P.S.- Katghora District- Korba (C.G.).

----Appellant**Versus**

- State of Chhattisgarh, through the Police Station G.R.P., District Raigarh (C.G.).

---- Respondent

For Appellant : Mr. Saurabh Dangi, Advocate.
For Respondent/State : Mr. K. K. Singh, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board by Shri Justice Gautam Chourdiya

04.02.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.09.2013, passed by the First Additional Judge (Special Judge) (N.D.P.S. Act), Raigarh in Special Case No. 09/10, convicting the accused/appellant under Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth "the NDPS Act") and sentencing him to undergo rigorous imprisonment for 12 years and to pay a fine of Rs. 1,25,000/- with default stipulation.
2. As per prosecution case, on 10.04.2010 A. K. Uikey, Sub-Inspector, G.R.P.F., Raigarh (PW-9) received a secret information

that one person namely Harishanker, aged about 26-27, is carrying cannabis (*Ganja*) in an air bag and boarding Tata Nagpur Passenger Train. The said information vide Ex.P/3 was reduced into writing in Rojnamchasanha No. 259/10 and was forwarded to the Superior Officer i.e. Dy. Superintendent of Police, Raipur. The police party along with witness namely Ramlal went to the spot, apprehended the accused, gave him notice (Ex.P-5) under Section 50 of the NDPS Act and made him aware of his legal rights, on which he consented to be searched by the police vide Ex.P-06. Personal search of the police party and the witnesses was also made by the appellant and nothing was found vide Ex.P-07. On search of the air bag, which the appellant was carrying Ganja like substance, was recovered and on being examined it by smelling and burning it was found to be Ganja. On weighment being done of the contraband it was found to be 24 kg vide Ex. P-08. Two samples, each of 50 gms, were drawn from the said contraband and seizure memo (Ex.P-09) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. One suitcase, one trolley bag and one air bag seized from the possession of the accused. One railway ticket (from Jharsugda to Champa) was also seized from the accused vide Ex. P/19.

3. The accused was arrested vide Ex.P-10. Intimation of the entire proceedings was forwarded to the Railway office of Superintendent of Police, Raipur. After reaching police station, FIR

(Ex.20) was registered against the appellant under Section 20 of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which were received by FSL on 22.03.2011 with intact seal and report of FSL is Ex.P-15-A, which confirms the seized contraband to be the Ganja.

4. After investigation, charge sheet was filed against the accused/appellant under Section 20 of the NDPS Act. The Special Judge (N.D.P.S. Act) framed charge under Section 20(b) (ii) (C) of the NDPS Act against him. Accused denied the charges framed against him and prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined 9 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No one examined as defence witness on behalf of the accused/appellant.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in opening paragraph of this judgment.

7. Learned counsel for the appellant submits that in this case the prosecution has failed to prove that the contraband (*Ganja*) was seized from the exclusive possession of the appellant as the independent witness has not supported the case of the

prosecution. All the witnesses, who were present at the place of occurrence, belonging to the GRP Thana, Raigarh and only one independent witness namely Ramlal (PW02) was present at the place of occurrence & examined before the Court and he has not supported the case of the prosecution and turned hostile. He further submits that as all the witnesses, who were present at the time of occurrence, belongs to the GRP department, therefore, they can be said to be the interested witness. He also submits that Investigating Officer did not comply with the mandatory provisions contained in Sections 41, 42 and 50 of the Act while making seizure of the alleged *Ganja*. Alternatively he submits that if this Court confirm the conviction of the appellant as awarded by the trial Court, keeping in view the age of the appellant and the fact that the incident took place around 10 years back and the minimum sentence prescribed for the offence the appellant may be sentenced to the minimum prescribed under the Act.

8. On the other hand, learned counsel for the State, while supporting the impugned judgment, submits that all the mandatory provisions contained in Sections 41, 42 & 50 of the NDPS Act have duly been complied with by the prosecution while making seizure of alleged *Ganja*, such as, notice under Section 50 of the NDPS Act was given to the appellant, thereafter, personal search of the police party and the witnesses was also made by the appellant and then consent for his search was given by the appellant, and, therefore, the Special Judge has rightly convicted

and sentenced the accused/appellant for the aforesaid offence, which need no interference.

9. We have heard learned counsel appearing for the parties and perused the material available on record.

10. A. K. Uikey, Sub-Inspector, G.R.P.F., Raigarh (PW-9), while supporting the prosecution case, has stated in his evidence that on 10.04.2010 on receiving a secret information from the informant that one person namely Harishankar, aged about 26-27 years is carrying cannabis (*Ganja*) in an air bag and boarding Tata Nagpur Passenger Train. He reduced the said information vide Ex.P/3 in writing in Rojnamchasanha No. 259/10 and forwarded the same to the Superior Officer Dy. S.P. vide Ex.P-1, thereafter he alongwith the police party and witnesses proceeded to the place of occurrence. He gave notice to the accused vide Ex.P-5 under Section 50 of the NDPS Act and made him aware of his legal rights to be searched either by any Gazetted Officer or Magistrate or to I. O., A. K. Uikey (himself). On being so informed, the accused consented to be searched by the police vide Ex.P-06. Personal search of the police party and the witnesses was also made by the appellant and nothing was found vide Ex.P-07. Then on search being made of the air bag which the appellant was carrying, Ganja like substance was recovered and on being examined by smelling and burning it was found to be Ganja. On weightment being done of the contraband it was found to be 24 kg vide Ex. P-08. Two samples, each of 50 gms, were drawn from the

said contraband and seizure memo (Ex.P-09) was prepared, the samples were duly sealed and kept in Malkhana and specimen of seal was affixed on the seizure memo. One suitcase, one trolley bag and one air bag seized from the possession of the accused. One railway ticket (from Jharsugda to Champa) was also seized from the accused vide Ex. P/19.

11. The accused was arrested vide Ex.P-10. Intimation of the entire proceedings was forwarded to the Railway office of Superintendent of Police, Raipur. After reaching police station, FIR (Ex.20) was registered against the appellant under Section 20 of the NDPS Act. The remaining contraband was deposited in Malkhana, samples were sent to FSL for chemical examination, which was received by FSL on 22.03.2011 with intact seal and report of FSL is Ex.P-15-, which confirms the seized contraband to the Ganja.

12. Bhagat Ram Bhoi (PW-1) has proved this fact that accused was arrested and after completion of the procedure, information to this effect was sent to the Deputy Superintendent of Police, Railway Police, Raipur and the receipt (Ex. P/1) to this effect submitted to G. R. P. Police Station, Raigarh.

13. Ghashiram Bariha (PW04) has proved the FSL report (Ex.P-15) There is no contradiction or omission in the statement of this witness.

14. Kaliram Uikey (PW05) has proved Rojnamcha Sanha Nos. 259, 260, 261 & 265 vide Ex. P/16 which establishes that before

the Investigating Officer proceeded after receiving information from the informant for search, he informed to his superior and then proceeded along with witness Ramlal (PW02) on the same day i.e. 10.04.2010. Accused belongs to the place of Korba village Jugli P. S. Katghora as mentioned in his statement 313 of Cr.P.C. There is no any previous enmity proved by the defence between the official witness of Police department and the appellant nor any suggestion was given by the defence that the appellant & the said witnesses were acquainted with each other or not. The procedure prescribed under Sections 41, 42 & 50 have been duly followed by the Investigating Officer within time and information of the entire proceeding were given to their higher Officer.

15. B.D. Pandey, (PW-06) is also one of the witnesses, who were present at the time of occurrence.

16. Omprakash Sahu (PW07) has stated in paragraph one of his statement that on 11.04.2010 two sealed packets alongwith a letter (Ex. P/18) of Superintendent of Police, Raipur were sent for chemical examination and the deposit receipt of the sealed packets & letter is Ex. P/17.

17. Looking to the statements of prosecution witnesses, in particular, the statement of investigating Officer- A.K. Uike, Sub Inspector, it is apparent that the procedure prescribed under Section 50 of NDPS Act is followed by the Investigating Officer while making seizure of the alleged ganja and there is no reason to disbelieve the statements of Investigating Officer and other

police officials.

18. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police Officer is found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the Court finds the evidence of the police officer as unreliable and untrustworthy, the Court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [Pramod Kumar V. State (GNCT) of Delhi reported in AIR 2013 Supreme Court 3344]. The same principle of law has

been reiterated by the Supreme Court in the matter of **Baldev Singh Vs. State of Haryana** reported in **(2015) 17 SCC 554** and in paragraph 10 it has been observed as under:

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”

19. In the present case, though the independent witness-Ramlal (PW02) has not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about search and seizure of the contraband. As per available evidence on record of prosecution defence has utterly failed to elicit anything from them which could suggest that they had any interest or enmity with the accused/appellant for his false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record as also from the evidence of independent witnesses. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

20. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so,

the findings recorded by the trial Court holding him guilty under Section 20 (b) (ii) (C) of the NDPS Act cannot be found faulted with and the same are hereby affirmed.

21. In the result the appeal is allowed in part while maintaining conviction of the appellant under Section 20 (b) (ii) (C) of the Act, considering the facts & circumstances of the case that the incident took place about 10 years back, the age of the appellant at the time of incident i.e. 27 years, keeping in view the minimum jail sentence prescribed under the act for the said offence i.e. RI for 10 years, the appellant is sentenced to RI for 10 years in place of 12 years as awarded by the trial Court. However, the fine amount of Rs. 1,25,000/- imposed upon the appellant with default sentence by the trial Court shall remain intact.

22. The appellant is reported to be in jail therefore, there is no need to pass any order with regard to his arrest /surrender etc.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge