

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 43 of 2021**

Smt. Rambai D/o Late Mangal Chouhan, aged about 48 years, R/o Bhagwanpur, Niche Basti, P.S. Kotraroad, District Raigarh (CG)

---Appellant

Versus

State of Chhattisgarh, Through the Station House Officer, Police Station, Kotraroad, District Raigarh (CG)

---- Respondent

For Appellant	Shri M.K. Jaiswal, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

28.1.2021

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.12.2020, passed by the Special Judge (NDPS Act), Raigarh(CG) in Special Criminal Case under the NDPS Act No.17 of 2018, whereby and whereunder the appellant has been convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances, 1985 (for short the NDPS Act) and sentenced to undergo R.I. for 6 months and to pay fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 4 months.
2. Brief facts of the case are that on 21.7.2018, Asst. Sub-Inspector, Police Station, Kotraroad, District Raigarh D.P. Bhardwaj (PW9), received secret information that the appellant had brought Ganja to sell and kept it in the Almirah of her bedroom. The information was reduced into writing in Rojnamcha Sanha vide Ex.P22 and

thereafter he sent Constable- Khirendra Jaltare (PW8) with notice to call for the independent witnesses under Section 160 of the Cr.P.C. which was also reduced into writing in Rojnamcha Sanha vide Ex.P23. Witnesses Kamlesh Kumar Singh(PW3) and Amrender Kumar Singh (PW4) were given the said notice.

2.1. The said witnesses were made aware of the secret information and thereafter, secret information panchanama Ex. P3 was prepared. Warrant panchanama without search warrant (Ex.P4) was prepared and all these information were forwarded to the City Superintendent of Police, Raigarh which was recorded in Rojnamcha Sanha vide Ex. P25. Thereafter, he along with police staff and witnesses proceeded to the place of incident vide Ex.P27. After reaching to the spot, notice under Section 50 of the NDPS Act was given to the accused/appellant in front of the witnesses vide Ex.P7 and she agreed to be searched by the lady Assistant Sub-Inspector, Santra Chouhan. Consent for search was obtained from the accused/ appellant vide Ex.P8. Search of the witnesses and the police party was made by the appellant vide Ex.P5 and Ex. P6 on which nothing objectionable was found in their possession. Thereafter, in presence of the witnesses, search of the house of the appellant was made and Ganja kept in the Almirah in green colour polythene bag in the bed room of the appellant was seized vide Ex.P9. The seized article, after smelling and tasting was identified as Ganja vide Ex.P10.

2.2. Komal Tandon (PW5) was given notice for bringing Scale and weight and physical verification panchanama of the scale and weight was made vide Ex.P12. On weighment of the contraband being made, it was found to be 1 kg, out of which 2 samples of 50

gm each were drawn, sealed and seized vide Ex.P14. Dehati Nalishi Ex.P28 was prepared on the spot, the appellant was arrested vide Ex.P15 and information of her arrest was given to Smt. Janki Chouhan vide Ex. P29. The seized articles were deposited in the Malkhana and a receipt thereof was received vide Ex.P32.

3. The seized articles were sent for chemical examination to FSL, which confirmed the contraband to be Ganja vide Ex.P40. The entire proceedings of the incident were reduced into writing and forwarded to the City Superintendent of Police under Section 57 of NDPS the Act vide Ex.P37.
4. After completion of investigation, charge sheet for the offence under Section 20(b)(ii)(B) of the NDPS Act was filed against the accused/appellant. The accused/appellant denied the charges and prayed for trial.
5. So as to hold the accused/appellant guilty, prosecution has examined as many as 12 witnesses i.e. Dorothisya Kindo (PW1), Gulab Chand Bhargav (PW2), Kamlesh Kumar Singh(PW3), Amrender Kumar Singh (PW4), Komal Tandon (PW5), Manoj Kumar Chouhan(PW6), Patwari- Abhishek Sahu(PW7), Constable- Khirendra Kumar (PW8), D.P. Bhardwaj (PW9), Dukhram Amliwari(PW10), Anil Kumar Sahu(PW11) and Assistant Sub-Inspector, Amit Kumar Patle(PW 12). Statement of the accused was recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her and took a plea that she has been falsely implicated in this case. However, no defence witness has been examined by her. After completion of trial, the accused/appellant was convicted and sentenced as mentioned in

para 1 of this judgment.

6. Learned counsel for the appellant submits that no substantial evidence has been collected by the prosecution and independent witnesses have not supported the case of prosecution. He submits that there is non-compliance of mandatory provision of Section 50 of the NDPS Act and only on the basis of interested witnesses, trial Court has convicted and sentenced the appellant under the aforementioned Sections of the NDPS Act. He further submits that the seizure of Ganja is also not made according to law, therefore, conviction of the appellant may be set aside. He placed reliance on **Kuldeep Singh V. State of Punjab** reported in **2011 CRI.L.J. 2672** as well as the judgment of this Court passed in **Nasir Khan Vs. State of C.G** reported in **2013(2) MPHT 43 (CG)**.
7. On the other hand, learned counsel for the State/respondent supported the impugned judgment and submits that the trial Court after considering the overall evidence has rightly convicted and sentenced the appellant as aforementioned. He submits that all the mandatory provisions have been complied with and there is no reason to falsely implicate the appellant in this case.
8. Heard learned counsel for the parties and perused the material available on record.
9. D.P. Bhardwaj (PW9) has stated that on 21.7.2018, he received an information regarding the appellant keeping Ganja in her house. Then he reduced the information into writing in Rojnamcha Sanha vide Ex.P22. Thereafter, he sent Constable Khirendra Jaltare(PW8) issuing notice to the independent witnesses under Section 160 of the Cr.P.C. which was also reduced into writing in Rojnamcha Sanha vide Ex.P23 and thereafter, he along with police staff

proceeded to the place of incident. The said information was given to the superior officer and that fact was also reduced into writing in the Rojnamcha Sanha. After reaching to the spot, notice under Section 50 of the NDPS Act was given to the accused/appellant in front of the witnesses and she agreed to be searched by the lady Assistant Sub-Inspector, Santra Chouhan. Thereafter, the witnesses and the police party were searched by the appellant vide Ex. P5 and Ex. P6. In presence of the witnesses, search of the house of the appellant was made and in bedroom Ganja kept in Almirah in green colour polythene bag was seized vide Ex.P9. The seized article, after smelling and tasting was identified to be Ganja vide Ex.P10. As per Ex.P12 physical verification of the scale and weight was made and on weightment of the ganga it was found 1 kg. Two samples of 50-50 gm each were prepared and sealed in presence of witness vide Ex.P14. Dehati Nalishi was prepared vide Ex.P28 and the appellant was arrested vide Ex. P15. The seized article was kept in safe custody of Police and thereafter, it was sent for examination to FSL. In examination, the article was found to be Ganja, the FSL report is Ex.P40. In cross-examination also, he remained firm on his statement.

10.Dorothiya Kindo (PW1) also proved this fact that in the bedroom of the appellant search was made by A.S.I. Santra Chouhan and Ganja was found in the Almirah and it was seized in presence of the witnesses.

11.Kamlesh Kumar Singh (PW3) has also proved the same fact as stated by Dorothiya Kindo (PW1) and he admitted his signatures on the documents Exs. P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14 and P15. However, he has turned hostile.

12. Amrender Kumar Singh (PW4) has deposed that he was served with a notice for being a witness in the proceedings and though admitted his signatures on Exs. P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15 and P16 but did not support the prosecution case and turned hostile.
13. Komal Tandon (PW5) has admitted his signatures on Ex.P18 and P13, but he did not support the case of prosecution.
14. Dhukhiram Amliwari (PW10), Head Constable has admitted his signatures on the documents Ex. P26 and Ex.P37 and duly supported the prosecution case. Likewise, Anil Kumar Sahu (PW11), Head Constable has also supported the prosecution case and admitted his signatures on Ex. P32 and Ex. P38. Amit Kumar Patle (PW12), Sub-Inspector while supporting the statement of D.P.Bhardwaj (PW9) has admitted his signatures on Exs. P37, P38, P39 and P40.
15. True it is that the independent witnesses in this case i.e. Kamlesh Kumar Singh (PW3), Amrender Kumar Singh (PW4) and Komal Tandon (PW5) have not supported the prosecution case and turned hostile, but they have admitted their signatures on the relevant documents. It is equally true that the other witnesses though police personnel being D.P. Bhardwaj (PW9), Dhukhiram Amaliwar (PW10), Anil Kumar Sahu (PW11), Amit Kumar Patle (PW12) and Dorothiya Kindo (PW1) have duly supported the prosecution case and stated as to the manner in which the entire proceedings regarding search and seizure were conducted under the NDPS Act, the appellant was found in possession of contraband Ganja weighing 1 kg which was confirmed to be Ganja after chemical examination by the F.S.L.

16. 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 is 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.
17. 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 Judgment 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:

18. "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 recent judgment dated 26.10.2020 delivered by the Hon'ble Supreme Court in the matters of ***Rajesh Dhiman vs State of Himachal Pradesh*** in **(CRA No.1032 of 2013)** and ***Gulshan Rana vs State of Himachal Pradesh*** in **(CRA No.1126 of 2019)**, where the accused/appellants were acquitted of the charge under Section 20 of the NDPS Act by the trial Court and later convicted under the said Section by the High Court, affirming the judgment of conviction of the High Court, the Apex Court referring to its earlier various judgments holding the field, held that non-examination of the independent witnesses or independent witnesses turning hostile would not *ipso facto* be fatal to the prosecution case if the evidence of the official witnesses/police personnel remain impeccable and free from the suspicion of falsity.
20. In the present case as observed above, though the independent witnesses have not supported the prosecution case, official witnesses have unequivocally stated about the search and seizure of the contraband from the possession of the appellant. As per evidence available on record, defence has utterly failed to elicit

anything from them which could suggest that they were in any manner inimical to the accused or were interested in false implication of the accused in the said crime. Therefore, their evidence appear to be trustworthy and supported by documentary evidence on record. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being police personnel.

21. So far as the judgments relied upon by the learned counsel for the appellant in the matters of **Kuldeep Singh and Nasir Khan** (supra) are concerned, in the said matters, as there was non-compliance of the mandatory provisions of Section 42 of the NDPS Act, the accused was acquitted of the offence under the Act. However, in the present case, on 21.7.2018 secret information was received by D.P. Bhardwaj (PW9) and the said information was forwarded to the superior authority i.e. City Superintendent of Police, Raigarh through Gulab Chand Bhargav (PW2) on the same day vide Ex. P1. D.P. Bhardwaj (PW9) also considering the fact that there may be concealment of evidence or escaping of the offender, prepared a panchanama for non-obtaining of search warrant vide Ex.P4 and forwarded the same with the secret information to the office of City Superintendent of Police, vide Ex. P26. The above fact has not been controverted by the defence in the cross-examination of these witnesses. In this view of the matter it is clear that there is substantial compliance of the provision of Section 42 of the Act. Therefore, the judgments relied upon by the counsel for the appellant being distinguishable on facts are of no help to him.

22. 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, conviction of the appellant under Section 20(b)(ii)(B) of the NDPS Act as well as the sentence awarded by the Special Judge appears to be just and proper warranting no interference and the same is affirmed by this Court.

23. Resultantly, the appeal being devoid of merits is liable to be and is accordingly, dismissed.

Sd/

(Gautam Chourdiya)
Judge