

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 835 of 2016

Judgment Reserved on : 03.03.2021

Judgment Delivered on : 25.03.2021

Ramlakhan S/o Pratapsingh, aged about 22 years, R/o- Village Dhagoi, P.S. Raya, District- Mathura, Uttar Pradesh.

---- Appellant

Versus

State of Chhattisgarh, Through: Station House Officer, G.R.P. Raigarh, District- Raigarh, Chhattisgarh.

----Respondent

For Appellant	:	Mr. Manoj Kumar Jaiswal, Advocate
For Respondent/State	:	Mr. Vaibhav Singh, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya
CAV JUDGMENT

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.10.2015, passed by the Special Judge, (NDPS) Act, Raigarh, District- Raigarh (C.G.) in Special Criminal Case (NDPS Act) No. 19/2014, convicting the accused/appellant for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act") and sentencing him to undergo rigorous imprisonment for 2 years with fine of Rs.5,000/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months.

2. Case of the prosecution in brief is that on 31.10.2014, PW-8 Sub Inspector-G.R. Rathiya, received a secret information from the informant that one man aged about 22 to 24 years is carrying *Ganja* in bag and the appellant is coming from Odisha via train i.e. Hirakund Express, the said information was reduced into writing vide Ex.P-2, he informed superior authority vide Ex.P-15. Independent witnesses namely Shivprasad Tiwari and Kamal Sarkar were summoned vide Ex.P-1. The police party along with the witnesses went to the spot, apprehended the accused/appellant, gave him notice vide Ex.P-3 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 officer vide Ex.P-17. Personal search of the police party and the witnesses was also made by the appellant, on which nothing objectionable was recovered from them vide Ex.P-4. However, on search of the appellant being made from one bag containing *Ganja* like substance was recovered, it was identified as *Ganja* by smelling and burning. On weighment being done, it was found to be 2 Kg and two samples, each of 50 gms, were drawn from the said contraband and sealed vide Ex.P-5. The bags as well as the samples were seized and sealed vide Ex.P-6. FIR vide Ex.P-19 was registered against the appellant under Section 20 of the NDPS Act. The accused/appellant was arrested vide Ex.P-7. The remaining contraband was deposited in Malkhana. Samples were sent to FSL for chemical examination and as per the report of FSL Raipur, the seized contraband was

confirmed to be Ganja vide Ex.P-22. After investigation, charge sheet was filed against the accused/appellant under Section 20 (b) of the NDPS Act. The trial Court framed charge under Section 20(b)(ii)(B) of the NDPS Act against the accused/appellant which was denied by him and he prayed for trial.

3. The prosecution examined 8 witnesses in support of its case i.e. PW-1 independent witness No.1 Kamal Sarkar, PW-2 Constable Haldhar Patel, PW-3 Head Constable Bhaskar Panigrahi, PW-4 Head Constable Shankarlal Sidar, PW-5 Head Constable- Manmohan Singh, PW-6 independent witness No.2 Shiv Prasad Tiwari, PW-7 Constable Shailesh Dhruw, PW-8 Sub Inspector- G.R. Rathiya. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.
4. 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 accused/appellant as mentioned above.
5. Learned counsel for the appellant submits that the trial Court without appreciating the overall evidence available on record has wrongly convicted the appellant by the impugned judgment. There are major contradictions and omissions in the

statements of the prosecution witnesses. The mandatory provisions of the NDPS Act for conducting search and seizure have not been complied as required under the law. In these circumstances, conviction of the appellant under Section 20 (b) (ii) B of the NDPS, Act and sentence imposed thereunder by the trial Court are liable to be set-aside.

6. On the other hand learned State counsel supporting the impugned judgment submits that trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant which needs no interference by this Court.
7. Heard learned counsel for the parties and perused the material available on record.
8. PW-8 Sub Inspector- G.R. Rathiya, investigating officer, has stated in his deposition that on 31.10.2014 after receiving secret information that one man carrying *Ganja* in his possession is coming from Odisha via train i.e. Hirakund Express, recorded the same in the Rojnamcha sanha vide Ex.P-2, informed the higher authorities regarding search without warrant vide Ex.P-8, summoned the witnesses namely Kamal Sarkar PW-1 and Shivprasad Tiwari PW-6 and thereafter proceeded with the staff and the witnesses to the indicated place. There he found the appellant on Platform No.2 with one bag of which he was given notice under Section 50 of NDPS Act vide Ex.P-3 and after obtaining his consent, the bag carried by the appellant was searched and contraband *Ganja* was recovered from it. On weighment being done, it was found

to be total 2 KG, vide Ex.P-5 from which two samples each of 50g were drawn, the samples and the remaining contraband were seized and sealed. The seized samples were sent to FSL for chemical examination vide Ex.P-20. Vide Ex. P-11 seized samples were kept in malkhana by PW-4- Head constable Shankarlal Sidar. The appellant was arrested vide Ex.P-7, information regarding the entire proceedings was forwarded to the S.R.P Office Raipur vide Ex. P-23 FIR was Ex.P-19 registered under Section 20 B of the NDPS Act against the appellant. As per FSL report Ex.P-22 contraband was confirmed to be *Ganja*. There is no reason to disbelieve the evidence of this witness as he has remained firm during his cross-examination.

9. PW-6 independent witness Shivprasad Tiwari has proved the same fact as stated by the PW-8 sub Inspector G.R. Rathiya and he admitted that in his presence contraband ganja was seized from the accused and documents vide Ex.P-1 to Ex.P-8 were prepared in his presence and bear his signatures. There is no reason to disbelieve the independent witness Shiv Prasad Tiwari. PW-2 constable Haldhar Patel deposited the seized samples of contraband in the FSL Raipur for examination.
10. PW-3 Head constable Bhaskar Panigrahi has supported the evidence of PW-8 on material particulars. In his cross-examination he also remained firm.
11. PW-4 head constable Shankarlal Sidar deposed that he received seized articles in sealed condition from PW-8

for keeping the same in malkhana and gave acknowledgment of Ex.P-11. PW-7 constable Shailesh Dhruw has proved submission of secret information panchnama (Ex.P-2) and search without warrant panchnama (Ex.P-8) in the SRP Office, Raipur. PW-5 head constable Manmohan Singh working in the SRP Office, Raipur, has proved receiving of the above information (Ex.P-28 & Ex.P-8) from PW-7 Constable Shailesh Dhruw.

12. 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.
13. 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:

“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.”

14. 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)**, reported in **(2020) 10 Supreme Court Cases, 740** 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, the Hon'ble Supreme Court

affirmed the judgment of conviction of the High Court, referring to its earlier various judgments holding the field held as under:

“A. Narcotic Drugs and Psychotropic substances Act, 1985- Ss. 53 and 41 to 44- Search and seizure – Investigation by complainant officer himself- Law laid down by Constitution Bench in Mukesh Singh, (2020) 10 SCC 120, reiterated, that in such cases it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias in the facts of the case, with no sweeping presumption being permissible- Constitution of India, Art.21”

“E. Narcotic Drugs and Psychotropic Substances Act, 1985- Ss. 41-44- Search and seizure- Non-examination of independent witnesses- Held, it would not ipso facto entitle accused to seek acquittal- Testimonies of the government officials being found to be impeccable, reversal of acquittal by the High Court held justified.”

“F. Narcotic Drugs and Psychotropic Substances Act, 1985- S.50- Applicability of- Held, not applicable, when the narcotics are discovered from a backpack carried by the accused- Safeguards for search of a person do not extend to his bag or other article being carried by him.”

15. Thus from the statements of the aforesaid witnesses PW-2 to PW-8 it stands proved that on the day of incident PW-8 upon receipt of secret information reached the indicated place alongwith other witnesses the staff and after giving notice under Section 50 of NDPS Act, searched the bag carried by the appellant, from which contraband weighing 2 kg was recovered. As per FSL report the said contraband was confirmed to be Ganja. From the evidence of the witnesses it is also clear that while conducting search and seizure proceedings PW-8 has duly complied with all the mandatory provisions of the act and forwarded the information regarding entire proceedings to the SRP Office Raipur.
16. In this case prosecution case is duly supported by evidence of the PW-8 investigating officer, PW-2, PW-3, PW-4, PW-5, PW-7. This apart PW-6 independent witness Shivprasad Tiwari has also supported the prosecution case on material particulars. Though PW-1 has turned hostile and though he admitted his signatures in documents vide Ex.P-1 to Ex.P-9.
17. 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; their evidence appear to be trustworthy and supported by the documentary evidence on record.
18. 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 awarded by the Special Judge and the sentence imposed thereunder appear to be just and proper warranting no interference and the same is affirmed by this Court.

19. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.
20. The appellant is reported to have completed his jail sentence and released after completion of his jail sentence, vide report dated 13.03.2020 of Jail Superintendent, Central Jail, Bilaspur, therefore, no order for his arrest, surrender etc is required is to be passed.

Sd/-

Gautam Chourdiya
Judge

Nadim