

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 214 of 2010**

1. Dinesh Tiwari S/o Late Shri Sankata Prasad Tiwari, aged about 40 years
Occupation Driver, R/o Tikra Para, Bilaspur Tah. & District Bilaspur(C.G.)
2. Keshav Patel S/o Shri Bhagwat Patel, aged about 21 years, Labourere
Resident of Mungeli, Police Station House Mungeli, District Bilaspur
(C.G.).

----Appellants**Versus**

State of Chhattisgarh, through Police Station House Bodhghat (Jagdalpur),
District Bastar (C.G.)

---- Respondent

For Appellants : Mr. Alok Kumar Dewangan and Ms. Pragya Pandey,
Advocates
For Respondent : Mr. H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****12/03/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 23/02/2010 passed in Special Case No. 36/2008 by the Special Judge (NDPS Act), Bastar (Jagdalpur)(C.G.), whereby the Appellants has been convicted under Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (henceforth 'the Act 1985') and sentenced to undergo RI for 10 years with fine of Rs. 1,00,000/- against each applicant with default stipulation.
2. Facts of the case are that on 16/06/2008 at about 6:35 am, ASI- G. S. Singh (PW4) received an information that two persons are coming from Dhanpunjui and going towards Jagdalpur. Both the persons are illegally transporting Ganja. He recorded the said information in Rojnamcha

Sanha (Ex.P-18). He called the witnesses and informed them about the information which he received from the informant and prepared Panchnama in this regard vide Ex.P-3. Thereafter, in compliance of the provisions contained under Section 42 of the Act, necessary information was sent to the higher official. He reached to the spot along with the witnesses and vehicle bearing registration No. CG10 ZD 0710 was stopped. Appellant No. 2 was sitting on driver seat and appellant No. 1 was sitting on other seat who told that he is the owner of the vehicle. On being searched, two boxes, kept beneath the back seats, were recovered, wherein 15-15 Kg Ganja was found. On further search, 70 Kg Ganja which was kept beneath the mat of jeep at the back side, was also seized. Samples of 50 grams Ganja from each packets were prepared. The seized Ganja and sample packets were sealed. After completion of other formalities, they returned to the police station. Samples packets, sealed Ganja and other property were submitted in Malkhana and acknowledgment was received. Thereafter, information was sent to higher official vide Ex.P-15. Sample packets were sent for chemical examination to Forensic Science Laboratory. The report of FSL is positive. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 7 prosecution witnesses have been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.

4. Learned Counsel appearing for the Appellant submit that the trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence. They further submit that the provisions of Sections 42, 52 (a) and 55 of the Act have not been duly complied by the prosecution. The independent witnesses Gourav Tiwari (PW2) and Kamlochan (PW3) have not supported the case of the prosecution. There are material contradictions and omissions occurred in the statements of the prosecution witnesses, instead thereof the trial Court has convicted the appellant. They further submit that appellant No. 2 was only driver of the said vehicle and the contraband was seized from the jeep which was kept beneath the seats and mat at the back side of the jeep. Appellant No. 2 was not having the knowledge that the contraband was kept there. According to the seizure memo also, the seizure of Ganja has been shown from the possession of Appellant No. 1, therefore, the conviction of Appellant No. 2 is not sustainable.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record as well as statements of the witnesses and exhibits annexed with the records.
7. With regard to non-compliance of necessary provisions of the Act, on perusal of the record of the trial Court and from the statement of I.O., G.S. Singh (PW4) and also after perusal of the documents, it is well established that all the necessary provisions of the Act has been duly

complied with.

8. With regard to seizure, though Gourav (PW2) and Kamlochan (PW3), independent witnesses have not supported the case of the prosecution, from the statement of Investigating Officer, G.S. Singh (PW4) seizure of contraband is well established. This witness has remained firm during his cross-examination. Lokesh Kumar (PW1) has also supported the statement of G.S. Singh (PW4) and apart from this, there is nothing on record on the basis of which it can be said that there was any previous enmity between the appellants and G.S. Singh (PW4) and Lokesh Kumar, therefore, their statements are reliable.
9. With regard to exclusive possession of the contraband, from the evidence adduced by the prosecution, it appears that the seized contraband was kept beneath the both seats and beneath the mat at the back side in boxes. Appellant No. 1 was owner of the jeep and appellant No. 2 was driver of the jeep. There is no material available on record which shows that appellant No. 2 was permanent driver of the said vehicle. It appears that on the date of incident, appellant No. 2 was driving the said vehicle first time. Since appellant No. 1 was owner of the said jeep, therefore, the seized Ganja which was kept in the jeep was well within the knowledge of appellant No. 1, but there is no clinching evidence available which shows that the same was also well within the knowledge of appellant No. 2. Since appellant No. 2 was driver of the said vehicle and probably was driving the vehicle first time, the contraband was not in visible condition and was kept in the boxes beneath the back seats and mat, therefore, it cannot be said that

appellant No. 2 was within the knowledge of the said Ganja.

10. Looking to the above, it is well established that there was exclusive possession over the Ganja of appellant No. 1 and appellant No. 2 is entitled to get benefit of doubt. Therefore, in my considered view, appellant No. 1 has been rightly convicted by the trial Court and thus his conviction is affirmed. However, the conviction of appellant No. 2 is not sustainable.
11. In the result, the appeal is partly allowed. The conviction of appellant No. 1 is affirmed. However, the appeal filed on behalf of appellant No. 2 is allowed and appellant No. 2 is acquitted from the charge framed against him.
12. It is reported that appellant No. 2 is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of six months in light of Section 437-A of the Cr.P.C.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge