

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1022 of 2020

1. Kalawati Rajak Wife of Kandhilal Rajak, aged about 45 years, Resident of Village Barvan, Thana Sugatala, District Narsinghpur (M.P.)

---- Appellant

Versus

1. State of Chhattisgarh, through Police Station G.R.P., Bilaspur District Bilaspur (C.G.)

---- Non-Appellant

For Appellant : Mr. Vikas Pandey, Advocate.
For Non-Appellant/State : Dr. (Ms.) Veena Nair, Dy. Advocate General.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

11/11/2021

- 1) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 09/12/2020 passed by Special Judge, (Narcotics) Bilaspur, District Bilaspur (C.G.) in Special NDPS Case No. 25/2018; whereby the appellant Kalawati Rajak stands convicted and sentenced as under:-

Conviction	Sentence
U/s 20(b)(ii)(B) of Narcotic Drugs and Psychotropic Substances Act (in short "the NDPS Act")	R.I. for 5 years & fine of Rs. 50,000/- in default of fine additional R.I. for 3 months.

- 2) Case of the prosecution, in brief, is that on 20/03/2018 PW-09 Inspector R.K. Borjha of G.R.P. Bilaspur after receiving secret information that one woman of 40-45 years is waiting at Platform No. 1 with a plastic bag containing Ganja for going to Katni, after recording said information in Rojnamchasanha No. 34 (Ex.P-24), having given notice under Section 160 of Cr.P.C. (Ex. P-14) to the witnesses, prepared secret information Panchnama (Ex. P-5) and after preparing search Panchnama without warrant (Ex. P-6)

forwarded the information (Ex. P-28) to the Deputy Superintendent of Police (Railway Raipur). Thereafter, the Police Party alongwith the witnesses reached Platform No. 1 of Railway Station Bilaspur, apprehended the appellant, gave her notice (Ex. P-15) under Section 50 of the NDPS Act making her aware of her legal rights of being searched either by the Magistrate or by the Gazetted Officer or by the Police, on which she consented to be searched by the Police. Thereafter, the Police party and the witnesses gave their personal search by the appellant vide Ex. P-16 on which nothing objectionable was recovered from them. From the possession of the appellant contraband kept in a white plastic bag was seized vide Ex. P-17. The contraband was identified by rubbing and smelling as Cannabis and upon weighment being done it was found to be total 13 KG. Out of the said contraband a sample of 50 grams was drawn for chemical examination and it was sealed. The Seal Specimen Panchnama vide Ex. P-22 was prepared. After conducting the aforesaid proceedings the Police Party returned to Police Station and registered FIR (Ex. P-31) under Section 20B of NDPS Act. Site plan of Railway Station Bilaspur Platform No. 1 was prepared Vide Ex. P-13. Appellant was arrested vide Ex. P-23 and information was given to her Son-in-law (Damad) Vide Ex. P-32 through mobile phone and information in writing was also given to her husband Kandhilal Rajak Vide Ex. P-33. The seized contraband was sent to FSL Raipur for examination vide Ex. P-37 which confirmed the contraband to be Ganja vide Ex. P-38. After completion of investigation charge sheet was filed against the accused/appellant under Section 20(b)(ii-B) of NDPS, Act.

- 3) The Trial Court framed charge against the accused/appellant under Section 20(b)(ii)(B) of NDPS Act. The accused/appellant denied the charge and prayed for trial.
- 4) The prosecution in support of its case examined as many as 11 witnesses namely PW-01 Sampat Sidar (Head Constable), PW-02 Manjulata Choudhary (Constable), PW-03 Dauwaram Sonwani (Constable), PW-04 Kamal Banjare (Constable), PW-05 Shweta

Yadav (Naib Tehsildar), PW-06 Anil Kaithwas (Railway Contractor), PW-07 Usha (S.I.), PW-08 Neelmani Choudhary (Reader), PW-09 Raj Kumar Borjha (Inspector/I.O), PW-10 Bhavesh Dewangan and PW-11 Ramjanam Mishra (Constable). The statement of the accused was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in her defence.

- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned above in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that there is total non-compliance of mandatory provisions of Sections 42 & 50 of NDPS Act. There is no independent witness who supported the prosecution case. The prosecution has failed to prove offence against the appellant. Only on the basis of evidence of the Investigating Officer who was interested in the case, conviction of the accused cannot be sustained. Therefore, conviction of the appellant under Section 20(b)(ii)(B) of NDPS Act is not in accordance with law and it is liable to be set aside.
- 7) Alternatively, he submits that if this Court ultimately confirms the conviction of the appellant, considering the facts and circumstances of the case, the fact that the incident took place around 3½ years back, the appellant is a woman of 45 years at the time of incident, she may be sentenced to the period already undergone. Reliance has been placed on the decision of Hon'ble Supreme Court of ***Nasir Vs. State of Uttar Pradesh reported in 2010 (13), SCC 251*** whereas the Hon'ble Supreme Court considering the fact that the appellant was sentence to 5 years imprisonment under Sections 399 and 402 of IPC, occurrence took place 29 years ago, the appellant remained in custody for period of 6 months, appeal allowed in part and reduced the sentence to the period already undergone by the appellant.

- 8) On the other hand, learned counsel for the State supporting the impugned judgment submits that there is no enmity of the appellant with the Investigating Officer and other witnesses of the Police Squad. There is no reason to disbelieve the Investigating Officer and other official witnesses in this case and strict compliance of all the mandatory provisions of the NDPS Act has been made by the Investigating Officer during search and seizure proceedings. The Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) PW-01 Sampat Sidar, Head Constable, states that he had deposited the contraband given to him by PW-09 Shri R.K. Borjha (I.O.) with the Malkhana vide Ex. P-1. Supporting the prosecution case he has stated that on 20/03/2018, total 13 KG contraband was seized from the possession of the appellant from which one sample of 50 Gram was drawn and rest of the contraband i.e. 12.950 Gram was separately sealed. He states that the seized sample was sent for chemical examination on 22/03/2018 and that the seized sample was in the safe custody of Malkhana. In cross-examination this witness remained firm.
- 11) PW-02 Manjulata Choudhary, Constable, states that she alongwith Police Party went to the spot, found the appellant there and 13 KG Ganja was seized from the bag of the appellant.
- 12) PW-03 Dauwaram Sonwani, Constable, has proved that a Secret Information Panchnama and Search Panchnama without warrant were submitted by him in the office of Deputy Superintendent of Police vide Ex. P-5 and Ex. P-6.
- 13) PW-04 Kamal Banjare, Constable, has proved deposit of the sample with FSL (Ex. P-8). PW-05 Shweta Yadav, Naib Tehsildar,

had conducted verification proceedings of Ganja seized from the appellant vide Ex. P-11 and Ex. P-12.

- 14) PW-06 Anil Kaithwas, Railway Contractor, independent witness has also proved seizure of contraband from the appellant. This witness has admitted his signature on Secret Information Panchnama vide Ex. P-5, Search Panchnama without warrant Vide Ex. P-6, notice to the appellant vide Ex. P-15, consent by the appellant vide Ex. P-4, search of the Police Party vide Ex. P-16, Seizure Recovery Panchnama vide Ex. P-17, identification panchnama vide Ex. P-18, Weighment Panchnama vide Ex. P-20, specimen Panchnama Vide Ex. P-22 and Arrest Panchnama of the appellant vide Ex. P-23. In cross-examination also he has supported the prosecution case.
- 15) PW-07 Usha, S.I., has also supported the prosecution case and stated that the contraband was seized from the possession of the appellant. In cross-examination nothing could be elicited by the defence to make her evidence doubtful.
- 16) PW-09 Raj Kumar Borjha, Investigating Officer, has categorically stated that upon receipt of secret information on 20/03/2018, he recorded the same in Rajnamchasanha vide Ex. P-24 and thereafter alongwith Police staff and 2 independent witnesses Bhavesh Dewangan and Anil Kaithwas proceeded to the indicated place, the appellant was made aware of her legal rights of being searched vide Ex. P-15 and from the bag carried by the appellant, contraband was seized which was found to be 13 KG upon weighment being done.
- 17) The evidence of the Investigating Officer has further being supported by PW-11 Ramjanam Mishra, Constable, as also by the independent witness PW-10 Bhavesh Dewangan.
- 18) Looking to the evidence of PW-09 Raj Kumar Borjha (I.O.) there is no reason to disbelieve this Investigating Officer. The defence counsel has not brought on record anything to show that the

Investigating Officer was having any ill will or enmity with the accused/appellant for her false implication in this case. During cross-examination of the witnesses also no such suggestion has been put to them that the Investigating Officer was inimical to the accused/appellant.

- 19) It is well settled principle of law that a Police Officer can or cannot be a sole eye witness 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.
- 20) 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 trustworthy, 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, 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 scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

- 21) Recently in the matter of **Mukesh Singh Vs. State (Narcotic Branch of Delhi) reported in (2020) 10 SCC 120** the Hon'ble supreme Court while dealing with the issue whether the trial has been vitiated on the ground of informant/complainant being the Investigating Officer, held that investigation by an Officer who himself informant/complainant in the case is not barred under NDPS Act or Cr.P.C. In a case where Investigating Officer himself is investigating, by that it cannot be said that investigation is vitiated on the ground of bias or like factor. Question of bias or prejudice would depend upon facts and circumstances of each case. Thus, on sole ground that informant himself is investigator in the case, accused is not entitled to acquittal. It has further reiterated that testimony of the police personnel will be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses his testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a Police Officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.
- 22) In this case the Police Officials who conducted the search and seizure proceedings have fully supported the prosecution case and the defence could not bring on record anything to suggest of false implication by them of the appellant. This apart the independent witnesses PW-06 Anil Kaithwas and PW-10 Bhavesh Dewangan also supported the prosecution case. Thus, from the unrebutted oral and documentary evidence on record, it is clear that while conducting search and seizure proceedings the police has duly

complied with the provisions of Sections 42 & 50 and other mandatory provisions of the Act.

- 23) On the basis of the aforesaid discussions considering the evidence available on record in light of the aforesaid judgments of the Hon'ble Supreme Court, this Court finds no illegality or infirmity in the impugned judgment convicting the appellant under Section 20(b)(ii)(B) of NDPS Act.
- 24) As regards the sentence considering the facts and circumstances of the case, the fact that the appellant is behind the bars for about 3½ years, at the time of the incident the appellant was 45 years and at present she must be 48 years, the incident took in 2018, the appellant is an illiterate woman belonging to village area, she has no criminal antecedents, this Court is of the opinion that no fruitful purpose would be served in keeping the appellant behind the bars any longer and the ends of justice would be served if the appellant is sentenced to the period already of 3 years and 09 months while keeping fine sentence with default stipulation imposed by the Trial Court intact.
- 25) In the result, the appeal is **allowed in part**. While maintaining the conviction of the appellant under Section 20(b)(ii)(B) of NDPS Act, her jail sentence is reduced to the period 3 years and 09 months. However, the fine amount of Rs. 50,000/- with default stipulation imposed by the Trial Court shall remain intact. The appellant is reported to be in jail, therefore, she be released from the jail after completion of the sentence imposed upon her by this Court.

-Sd/-
(Gautam Chourdiya)
Judge