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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1585 of 2018**Judgment reserved on : 16/02/2021Judgment delivered on : 09/03/2021

- Duryodhan Nag S/o Chandan Nag, Aged about 23 years, R/o Navaguda, P.S. Sarigaon, District – Navrangpur Orrisa (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through – Aarakshi Kendra Farasgaon, District Kondagaon (C.G.)

---- Respondent/State

For Appellant	:	Shri Vikash Shrivastava, Advocate
For Respondent/State	:	Shri Sameer Uraon, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J**C.A.V. Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.09.2018 passed by the Special Judge (Narcotic Drugs and Psychotropic Substances Act, 1985), Kondagaon, District Kondagaon (C.G.) in Special Case No. 01 of 2015, whereby the appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 20 (B) (ii) (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS, Act')	R.I. for four years and pay a fine of Rs.25,000/-, in default of payment to further undergo R.I. for six months

2. The allegation against appellant Duryodhan Nag is that on 11.12.2014, 7 Kg & 100 gram of *ganja* was found in possession of the appellant in his bag.
3. Facts of the case, in brief, are that on 11.12.2014 PW-6 Narad Kumar

Suryavanshi, Inspector/S.H.O., who was posted at Police Station Farasgaon at the relevant time, received secret information from the informant that three persons (present appellant and two others), who were residents of Orrisa, were having *ganja* which was kept in three separate bags. The said three persons were sitting at Subhash Chandra Bose Tiraha near Boregaon Dhabha and were waiting for bus for going towards Raipur. On this, the said information given by the informant was recorded at 18:00 hours in *Roznamchasaha* No. 28 vide Ex.-P/33 and copy of the same is Ex.-P/33-C. After recording Ex.-P/33 by PW-6, he gave notice through Constable No. 546 Krishna Kumar Sahu to witnesses namely Sanjiya Kundu & Mahavir Netam to be present and the same was recorded at 18:05 in *Roznamchasahna* No. 29 vide Ex.-P/34 and the copy of the same is Ex.-P/34-C. Thereafter, PW-6 prepared *Panchnama* (Ex.-P/2) at about 18:35 hours under Section 42 of the N.D.P.S. Act regarding information received from informant in presence of the witnesses.

4. On there being no search warrant to start the above proceedings, PW-6 sent information through Constable No. 343 Raghunath Kashyap to office of S.D.O.P., Farasgaon which was reduced into writing at about 18:55 hours in *Roznamchasahna* No. 31 vide Ex.-P/36 and the copy of the same is Ex.-P/36-C and he also directed Constable no. 343 that after giving letter vide Ex.-P/37 to S.D.O.P., he must remain present on the spot. Thereafter, PW-6 proceeded for further action and reached at Subhash Chandra Bose Tiraha near Boregaon Dhabha along with police personnel, independent witnesses and articles like needle, thread, seal, electronic weighing machine, arrest memo, plain-paper, carbon & other articles for apprehending the accused/appellant and in this regard it was reduced into writing in *Roznamchasahna* No. 32 vide Ex.-P/38 and copy of the same is Ex.-P/38-C. On being inquired, the present appellant and other co-accused persons

disclosed their name as Durydhan Nag (the present appellant), Hari Prasad Mangli & juvenile (v) and the police party apprehended them.

5. In presence of witnesses namely Sanjiya Kundu (PW-1) and Mahavir Netam (PW-7), the police gave notices (Ex.-P/4 & Ex.-P/5) to the appellant and co-accused namely Hariprasad Mangli under Section 50 of the NDPS Act and made them aware of their legal rights, on which they consented to be searched by the police. Firstly, PW-6 got personal search of himself by the appellant and co-accused persons vide Ex.-P/6 which was without any result. Thereafter, the members of raiding party and the witnesses were searched by the appellant and co-accused person vide Ex.-P/7 & Ex.-P/8, which was also without any result. Appellant Duryodhan Nag gave his consent for search by police vide Ex.-P/10. Thereafter, at about 21:30 hours, dark green coloured bag of appellant Duryodhan was searched by PW-6 in which contraband article (seeds & leaves of *ganja*) was found in plastic-bag vide search *panchnama* Ex.-P/12 and at about 21:35 hour, recovery *panchnama* was prepared vide Ex.-P/14. At about 21:40 hour, PW-6 also prepared identification-*panchnama* of contraband which was seized from appellant Duryodhan by smelling, rubbing and burning vide Ex.-P/16 and on being weighed, it was found to be 07 Kg & 100 grams of *ganja* vide weighing-*panchnama* Ex.-P/21.

Thereafter, out of 07 Kg & 100 grams *ganja*, PW-6 prepared two samples of 50-50 grams, prepared *panchnama* vide Ex.-P/23 and particular of specimen seal was prepared vide Ex.-P/24. 07 Kg & 100 grams of contraband was seized from the possession of appellant Duryodhan vide seizure memo Ex.-P/26 and he was taken into custody vide arrest memo Ex.-P/28. The seized articles and the sample were handed over to *Malkhana Moharrir* for their safe custody vide Ex.-P/30. Spot map was prepared by Patwari vide Ex.-P/31. First Information Report (Ex.-P/45) was

recorded in Police Station Farasgaon, District Kondagaon on 12.12.2014 and entire proceedings was informed to the office of S.D.O.P., Farasgaon, District Kondagaon within time vide Ex.-P/54. Samples of the seized *ganja* from appellant Duryodhan marked as Article 'B-1' was sent to the Forensic Science Laboratory (FSL), Raipur for chemical examination vide Ex.-P/55 from where a report was received vide Ex-P/52. As per report Ex.-P/52 the *ganja* was found in Article 'B-1'.

6. After completion of the investigation, charge-sheet was filed against the present appellant and two other co-accused persons under station 20 (B) of the NDPS, Act and while framing the charge, the Special Judge framed the charge jointly against the present appellant and co-accused namely Hari Prasad Mangli under Section 20 (B) (ii) (b) of the NDPS Act which was denied by them and they prayed for trial and separate charge-sheet against co-accused juvenile (v) was filed before the concerned Juvenile Justice Board for separate trial.
7. So as to hold the accused/appellant guilty, the prosecution examined 07 witnesses namely PW-1 Sanjiya Kundu, PW-2 Ganga Prasad Sriwas, PW-3 Lakhmuram Sori, PW-4 Sudarshan Mazumdar, PW-5 Jitendra Verma, PW-6 Narad Kumar Suryawanshi and PW-7 Mahavir Netam in support of its case. Statements of appellant Duryodhan and co-accused were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness examined by appellant Duryodhan Nag.
8. After appreciation of the evidence available on record, the learned Special Judge (NDPS) Act, Kondagaon, District Kondagaon (C.G.) by the impugned judgment convicted and sentenced the present appellant as mentioned in para-1 of this judgment, hence this appeal.
9. Learned counsel for the appellant submitted that the evidence led by the

prosecution lacks requisite proof required to convict the appellant under Section 20 (B) (ii) (b) of the NDPS Act. He further submitted that the independent witnesses namely Sanjiya Kundu (PW-1) and Mahavir Netam (PW-7) did not support the case of the prosecution. He also submitted that only on the testimony of PW-6 Narad Kumar Suryavanshi, Investigating Officer, the appellant has been held guilty, whereas there is nothing in his testimony of PW-6 to show that Section 50 of the NDPS, Act is complied with. He further submitted that the conclusion and findings of the Special Court are based on presumption and surmises and the same are liable to be set aside.

10. On the other hand, learned counsel for the State supporting the impugned judgment submitted that the Special Court considering the overall evidence available on record has rightly convicted and sentenced the present appellant by the impugned judgment which calls for no interference by this Court.
11. Heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.
12. PW-6, Narad Kumar Suryawanshi, in his deposition, has categorically stated that upon receipt of secret information he alongwith the witnesses and the police party after recording the same in the *Roznamchahna* vide Ex.-P/33 and sending the copy of the same to superior authority, proceeded for indicated place. The accused persons were found there, firstly, the police party and the witnesses were got searched by the accused persons on which nothing objectionable was seized from their possession. On the consent of appellant Duryodhan Nag being obtained vide Ex.-P/10, in the dark green coloured bag carried by appellant *ganja* like substance was seized. The said substance was examined by smelling, rubbing and burning vide Ex.-P/16 and found to be *ganja*. After weighment, it was found to be 07 Kg & 100 grams vide seizure memo Ex.-P/26, out of 07 Kg & 100 grams, two

samples of 50-50 grams drawn vide Ex.-P/23 and particular of the specimen seal was prepared vide Ex.-P/24. The appellant was taken into custody vide Ex.-P/28. The seized articles and the samples were handed over to *Malkhana Moharrir* for their safe custody vide Ex.-P/30. The F.I.R. was recorded vide Ex.-P/45 on 12.12.2014 and information regarding the entire proceedings was sent to the Office of S.D.O.P., Farasgaon, District Kondagaon vide Ex.-P/54. The seized article from appellant Duryodhan Nag was sent to FSL, Raipur vide Ex.-P/55 and as per FSL report, the contraband was confirmed to be *ganja*. There is no reason to disbelieve the evidence of Investigating Officer Narad Kumar Suryawanshi (PW-6) and no any single reason is shown that appellant Duryodhan Nag was falsely implicated in this case. There was substantial compliance of provision of Sections 42 & 50 of the NDPS, Act by PW-6.

13. PW-2 Ganga Prasad Sriwas, Assistant Sub-Inspector, has proved this fact that 07 Kg & 100 grams of *ganja* was seized from appellant Duryodhan Nag and out of the same, 50-50 grams of *ganja* for examination were received by him for keeping in safe custody in *Malkhana* and the entry of the same was made in goods-register at serial No. 104 vide Ex.-P/30 and he has duly proved the same.

14. PW-3 Lakhmuram Sori is the Patwari. He prepared spot map (Ex.-P/31), admits his signature and has duly proved the same.

15. PW-4 Sudarshan Mazumdar, Assistant Sub-Inspector, has proved this fact that the *ganja* was seized from appellant Duryodhan Nag and has supported the version of PW-6 Narad Kumar Suryawanshi. PW-5 Jitendra Veram, Sub-Inspector, is also corroborating the evidence of PW-6. There is no reason to disbelieve the evidence of PW-4 & PW-5 and they have remained firm during their cross-examination.

16. In the instant case, though the independent witnesses namely Sanjiya

Kundu (PW-1) and Mahavir Netam (PW-7) have not supported the prosecution case and have been declared hostile by the prosecution, but they have duly signed and admitted their signatures on the documents i.e. Ex.-P/1 to Ex.-P/28 and, therefore, there is no reason whatsoever to discard/disbelieve the evidence of these police officials witnesses and independent witnesses for the purpose of convicting and sentencing the accused/appellant as aforementioned particularly when they have admitted their signatures on the requisite documents i.e. Ex.-P/1 to Ex.-P/28.

17. Thus, looking to the statements of the prosecution witnesses, in particular, the statement of Investigating Officer – Narad Kumar Suryawanshi (PW-6), it is quite apparent that all the relevant procedure prescribed under the NDPS, Act had duly been complied with by the Investigating Officer while making search and seizure of the contraband (seeds & leaves of *ganja*) and there is no reason to disbelieve the statements of the 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 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 also based on the principle that quality of the evidence weighs over the quantity of evidence. **[Pramod Kumar Vs. State (GNCT) of Delhi]** reported in **AIR 2013 SC 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. ”

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 charges 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 the suspicion of falsity.

20. In the present case, though independent witnesses i.e. Sanjiya Kundu (PW-1) and Mahavir Netam (PW-6) have not supported the prosecution case and have been declared hostile, but they have admitted their signatures on all relevant documents. However, the other witnesses i.e. police personnel namely PW-6 Narad Kumar Suryawanshi, PW-2 Ganga Prasad Sriwas, PW-4 Sudarshan Mazumdar and PW-5 Jitendra Verma 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 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 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.

21. 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 Special Court holding appellant Duryodhan Nag guilty under Section 20 (B) (2) (b) of the NDPS, Act cannot be faulted with and the same are hereby affirmed.

22. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

23. A report has been received from Office of Jail Superintendent, Central Jail, Jagdalpur, District Bastar (C.G.) dated 19.08.2020 about the status of the accused/appellant. It is stated in that report that the accused/appellant

Duryodhan Nag has been released from jail on 26.09.2019 after completion of his entire sentence awarded to him by the Special Court, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-

(Gautam Chourdiya)
Judge

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