

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 09/03/2021****Judgment delivered on : 10/05/2021****CRA No. 239 of 2020**

1. Chandrashekhar Bhardwaj, S/o Karmu Bhardwaj, Aged About 34 Years, R/o Village Godan, P.S. Sarangarh, District- Raigarh, Chhattisgarh.
2. Liladhar Lahare, S/o Jagram Lahare, Aged About 30 Years, R/o Village Godan, P.S. Sarangarh, District- Raigarh, Chhattisgarh.

---- Appellants**Versus**

- State of Chhattisgarh, Through: The Station House Officer, Police Station Sarangarh, District- Raigarh, Chhattisgarh.

---- Respondent

For Appellants : Shri Sunil Sahu, Advocate
For Respondent/State : Shri Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Gautam Chourdiya**CAV Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.12.2019 passed by the Special Judge, NDPS, Raigarh (C.G.) in Special Criminal Case (NDPS Act) No. 01/2017, convicting each of the accused/appellants 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 them to undergo rigorous imprisonment for 4 years with fine of Rs. 25,000/-, in default of

payment of fine to further undergo rigorous imprisonment for 6 months.

2. Case of the prosecution, in brief, is that on 25.05.2017, PW-5 Sub Inspector-Ibrahim Mohammad Qureshi was on patrolling, he received a secret information from the informant that two persons are coming from Orrisa carrying Ganja for sale, the said information was reduced to writing vide Ex.P-2. Independent witnesses namely Dhankumar and Vijay Kumar Yadav were summoned vide Ex.P-1. The police party along with the witnesses went to the spot, apprehended the accused/appellants, gave them notice vide Ex.P-3 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 officer. Personal search of the police party and the witnesses was also made by the appellants, on which nothing objectionable was recovered from them vide Ex.P-4 & 5. However, on search being made, 4 packets were recovered from one bag, 8 packets were recovered from another bag and 2 packets were recovered from the dickey of the motorcycle which contained Ganja like substance vide Ex.P-6. The said contraband was identified as *Ganja* by smelliing and burning vide contraband identification panchnama Ex.P-7. On weighment being done of the contraband, it was found to be 14 Kg and two samples, each of 100-100 gms, were drawn from the said contraband and the bags as well as the samples were seized and sealed vide Ex.P/11 & 12. Information regarding the entire proceedings was forwarded to SDO (Police) vide Ex.P-18, FIR vide Ex.P-31 was registered

against the appellants under Section 20 of the NDPS Act. The accused/appellants were arrested vide Ex.P-13 & 14. 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-28. After investigation, charge sheet was filed against the accused/appellants 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/appellants which was denied by them and they prayed for trial.

3. The prosecution examined as many as 7 witnesses PW-1 Dhankumar, PW-2 Vijay Kumar Statement, PW-3 Rajesh Kumar Nirala, PW-4 Yashvant Maravi, PW-5 Sub Inspector- Ibrahim Mohammad Qureshi, PW-6 R.K. Mishra and PW-7 Head Constable- Arjun Singh. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in their 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/appellants as mentioned above.
5. Learned counsel for the appellants submits that the trial Court without appreciating the overall evidence available on record has

wrongly convicted the appellants by the impugned judgment. No independent witnesses in this case has supported the prosecution case. 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 appellants under Section 20 (b) (ii) B of the NDPS, Act and sentence imposed thereunder by the trial Court are liable to be set-aside.

Alternatively, relying upon the judgment dated 29.07.2016 of the co-ordinate Bench of this Court in the matter of Pritam Patel Vs. State of CG passed in Cr.A.No.903/2015 wherein 16 kg of Ganja was seized from the accused, he had remained in jail for about 2 years and 4 months, his jail sentence was reduced to the period already undergone, it is submitted that if this Court ultimately comes to the conclusion that the appellant has rightly been convicted by the trial Court, considering the fact that the incident took place way back in the year of 2017, the appellants are poor persons, they are young offenders of 30 and 34 years, there is no criminal antecedents of the appellants, there is no one to look after their family, they have already remained in jail for more than 2 years, the jail sentence imposed on them may be reduced to the period already undergone by them and the fine amount may also be suitably reduced.

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 appellants which needs no interference by this Court.

7. Heard learned counsel for the parties and perused the material available on record.
8. PW-5 Sub Inspector- Ibrahim Mohammad Qureshi, investigating officer, has stated in his deposition that on 25.05.2017 while he was on patrolling, he received a secret information from the informant that two persons are coming from Orrisa carrying Ganja for sale, the said information was reduced to writing vide Ex.P-2 and thereafter, independent witnesses namely Dhankumar and Vijay Kumar Yadav were summoned vide Ex.P-1. The police party along with the witnesses went to the spot, apprehended the accused/appellants, gave them notice vide Ex.P-3 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 officer. On search being made, 4 packets were recovered from one bag, 8 packets were recovered from another bag and 2 packets were recovered from the dickey of the motorcycle which contained Ganja like substance vide Ex.P-6. The said contraband was identified as *Ganja* by smelling and burning vide contraband identification panchnama Ex.P-7. On weighment being done, the contraband was found to be 14 Kg out of which two samples, each of 100-100 gms, were drawn and the bags as well as the samples were seized and sealed vide Ex.P/11. Information regarding the entire proceedings was forwarded to SDO (Police) vide Ex.P-18, FIR vide Ex.P-31 was registered against the appellants under

Section 20 of the NDPS Act. The accused/appellants were arrested vide Ex.P-13 & 14. 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-28. There is no reason to disbelieve the evidence of this witness as he has remained firm during his cross-examination.

9. PW-3 Rajesh Kumar Nirala, PW-4 Yashwant Maravi, PW-6 R.K. Mishra have duly supported the evidence of PW-5 on material particulars. In their cross-examination they also remained firm. PW-1 Dhankumar and PW-2 Vijay Kumar Yadav independent witnesses have though admitted their signatures on the documents vide Ex.P-1 to Ex.P-15 but they have not supported the prosecution case.
10. PW-7 Arjun Singh Patel has also admitted the fact that after receiving secret information by PW-5 I.M Qureshi, he alongwith PW-5 and police staff as well as two independent witnesses proceeded to the indicated place, apprehended the appellants and from their possession total 14 kg *Ganja* was seized and the appellants were arrested. In his cross-examination he also remained firm.
11. True it is that the independent witnesses in this case PW-1 and PW-2 have not supported prosecution case and turned hostile but they have admitted their signatures on the documents vide Ex.P-1 to Ex.P-15. It is equally true that the other witnesses, though

police personnel being PW-3 PW-4, PW-5, PW-6, and PW-7 have duly supported the prosecution case and stated as to the manner in which the entire proceedings were conducted under the NDPS Act, the appellants were found in possession of the contraband which was confirmed to be *Ganja* after chemical examination by FSL.

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. In the present case, also, though independent witnesses PW-1 and PW-2 have not supported the prosecution case but other witnesses i.e PW-3, PW-4, PW-5, PW-6 & PW-7 have duly supported the prosecution case and unequivocally stated about the search and seizure of the contraband from the possession of the appellants. As per evidence available on record, it stands proved that all the mandatory provisions of the NDPS Act have been duly complied with by the investigating officer while conducting investigation. The defence has utterly failed to elicit anything from these witnesses 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. In these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the Police personnel.

16. Thus, regard being had to the overall evidence on record, oral and documentary, complicity of the accused/appellants in crime in question stands proved beyond all reasonable doubt. Being so, conviction of the appellants under Section 20 (b) (ii) (B) of the NDPS Act awarded by the Special Judge appears to be just and proper warranting no interference and the same is affirmed by this Court.

17. As regards the sentence, considering the facts and circumstances of the case, the fact that the incident took place in the year 2017, the appellants who are 30 and 34 years old have no criminal antecedents and they are the first offenders, they were on bail during trial and did not misuse the liberty, they are in jail after passing of the impugned judgment (appellant Chandraprakash remained in jail for about 2 years, 3 months and 26 days and appellant Leeladhar remained in jail for about 2 years, 2 months and 7 days), keeping in view of the judgment dated 29.07.2016 of the co-ordinate Bench of this Court in the matter of **Pritam Patel Vs. State of CG** passed in Cr.A.No.903/2015, this Court is of the opinion that in the present case also no useful purpose would be served in keeping the appellants behind the bars any more and

the ends of justice would be served if they are sentenced to the period already undergone by them while keeping the fine amount with default sentence as imposed by the trial Court intact.

18. In the result, the appeal is allowed in part. While maintaining the conviction of the appellants under Section 20 (b) (ii) (B) of the NDPS Act, they are sentenced to the period already undergone by them. However, the fine amount with default sentence as imposed upon them by the trial Court shall remain intact.

19. The appellants are reported to be in jail, therefore, they be released forthwith on their depositing the entire fine amount imposed upon them by the trial Court.

Sd/-
Gautam Chourdiya
Judge

Nadim