



2025:CGHC:10588

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HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1972 of 2023**

{Arising out of judgment dated 25.08.2023 passed in Special Criminal Case No.62/2018 by the learned Special Judge (N.D.P.S.Act) Raipur}

1 - Aasha Ram Bagh, S/o. Kura Bagh @ Indra Bagh, Aged About 40 Years, R/o. Village Motigaon Palsapara, Police Station Chandahandi, District : Nabarangapur, Orissa

2 - Naresh Harpal, S/o. Bedlal Harpal, Aged About 32 Years, R/o. Village Dohel, Police Station Deobhog, District : Gariyabandh, Chhattisgarh

... Appellants**versus**

State Of Chhattisgarh, Through - Station House Officer, Police Station- Gariyaband, District : Gariyabandh, Chhattisgarh

... Respondent

For Appellants : Mr. Vijay Kumar Sahu, Advocate

For Respondent : Dr. Surendra Kumar Dewangan, Panel Lawyer

(Single Bench)

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

(04.03.2025)

Sanjay K. Agrawal, J.

1. Two appellants herein have preferred this criminal appeal under Section 374(2) of Cr.P.C. against the impugned judgment dated 25.08.2023, passed by the learned Special Judge (N.S.PS.Act) Raipur in Special Criminal Case No.62/2018, by which they have been convicted for offence under Section 20(b)(ii)(B) of N.D.PS. Act and sentenced to undergo 4 years rigorous imprisonment and fine of Rs.25000/- each, in default of payment of fine amount, 6 months' additional rigorous imprisonment.
2. Case of the prosecution, in brief, is that on 07.07.2018 at about 1:00 p.m. at Bus Stand Gariyaband, Police Station-Gariyaband, from the possession of the each of two appellants herein, who were sitting in the Bus, 10 Kg - 10 Kg contraband Ganja were seized by the police on having been received a secret information from the informant. Thereafter, the appellants were charge-sheeted for the offence under Section 20(b)(ii)(B) of N.D.PS. Act before the Special Court, on which

the appellants abjured guilt and entered into defence stating that they have not committed any offence and they have been falsely implicated.

3. The trial Court after appreciating the oral and documentary evidence on record, convicted the appellants for the offence under Section 20(b)(ii)(B) of N.D.P.S.Act and sentenced to undergo 4 years rigorous imprisonment, against which the present appeal has been preferred.
4. Mr. Vijay Kumar Sahu, learned counsel for the appellants, would submit that Section 50 of the N.D.P.S.Act has not been complied strictly, therefore, the appellants are entitled for acquittal. In alternative, he submits that the appellants are in custody for about 2 years and the fine amount imposed upon them is also in excess, therefore, the appeal be allowed in full or in part.
5. Dr. Surendra Kumar Dewangan, learned State counsel, would support the impugned judgment and submit that since the seizure has been made from the bag, therefore, Section 50 of the N.D.P.S. Act would not applicable in view of the decision rendered by the Supreme Court in the matter of State of Himachal Pradesh v. Pawan Kumar¹ and, as such, the sentence

1 AIR 2005 SC 2265

awarded to the appellants is just and proper, therefore, they are not entitled for acquittal and the appeal deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
7. Admittedly, in the case in hand on 07.07.2018, illegal contraband i.e. Ganja was seized from the possession of two appellants sitting in the Bus. The two witnesses Kunal Dhargave (PW-1) and Jagga Nirmalkar (PW-3) both have turned hostile and have not supported the case of the prosecution, but the Investigating Officer namely Sanjay Meravi (PW-10) has duly proved the seizure of Ganja from the appellants vide Ex.P-18 & Ex.P-19. In this regard, their Lordships of the Supreme Court in the matter of **PP. Fathima v. State of Kerala**² held that mere fact that a panch witness did not support the prosecution case by itself would not make the prosecution case any less acceptable, if otherwise the court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made and observed in Para-07 as under:

2 (2003) 8 SCC 726

“7. Learned counsel then contended that in view of the fact that the Panch witness to the seizure has not supported the prosecution case, the seizure cannot be accepted. We have repeatedly held that the mere fact that a Panch witness does not support the prosecution case by itself would not make the prosecution case any less acceptable if otherwise the court is satisfied from the material on record and from the evidence of the seizing authority that such seizure was genuinely made. In the instant case also we are satisfied that from the evidence of PWs. 1 and 2 the seizure has been proved by the prosecution. Therefore, this argument also fails.”

8. The N.D.P.S. Act is a complete Code in itself. Once the procedure enumerated in Sections 42, 43, 49 & 50 is scrupulously followed, it was for the accused, from whose possession the substance is recovered, to explain how he came into possession of the same. It has also been held by their Lordships of the Supreme Court in Mukesh Singh v. State (NCT of Delhi)³ that it is not always necessary to corroborate the testimony of police officials, through the testimony of independent witnesses.

3 (2020) 10 SCC 120

9. In the matter of Dharampal Singh v. State of Punjab⁴ it has been held that lack of independent witness is not fatal to the case of the prosecution. By adopting same analogy, it has further been held in Rizwan Khan v. State of Chhattisgarh⁵ that the independent witnesses turning hostile, cannot be a ground for acquittal under the N.D.P.S. Act.
10. As such, from above analysis on the point, it is vividly clear that merely because seizure witnesses have not supported the case of the prosecution, it cannot be said that the entire prosecution's case stands vitiated. More particularly, in the present case, Investigating Officer, namely, Sanjay Meravi (PW-10) has duly proved and supported recovery and seizure of Ganja from the appellants vide seizure memo Ex.P-18 & Ex.P-19 and, as per FSL report (Ex.P-45) also, it has been opined that Ganja is present in the sample A-1 & B-1, which was taken from the contraband seized from the appellants from the spot. Therefore, I do not see any good ground to disbelieve the fact of recovery and seizure of Ganja from the appellants on the date and time of the offence and, as such, the findings recorded by the learned Special Court in this

4 (2010) 09 SCC 608

5 (2020) 09 SCC 627

regard, is liable to be and the same is hereby affirmed. I hereby hold accordingly.

11. Now, the next contention raised on behalf of the appellants is that Section 50 of the N.D.P.S. Act has not been complied with by the prosecution in the present case.
12. Admittedly, in the instant case, Ganja has been seized from the bags found in possession of the appellants. In this regard, the Supreme Court in Pawan Kumar (supra) held in para 10 as under :

"10. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. The common parlance it would be that a person is

carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

In view of the above-stated legal position, compliance of Section 50 of the N.D.P.S. Act in the instant case would not be necessary, as the Ganja was found in the bags, which were in possession of the present appellants.

13. Lastly, it has been contended that the sentence awarded to the appellants and fine amount imposed are at higher side and therefore, it may be reduced accordingly.
14. Considering the quantity of Ganja seized from the possession of the appellants, which is lesser than commercial quantity but more than small quantity, the sentence awarded to the appellants to undergo 4 years rigorous imprisonment is reduced to 2 years, however, the fine amount imposed upon the appellants shall remain as it is.
15. In the result, this criminal appeal is partly allowed to the extent indicated herein-above.

16. Let a certified copy of this judgment along with the original record be transmitted forthwith to the concerned trial Court for necessary information & action, if any. A copy of the judgment may also be sent to the concerned Jail Superintendent forthwith wherein the appellants are suffering the jail sentence.

Sd/-
(Sanjay K. Agrawal)
Judge

Ashok