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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1208 of 2018

1 - Vijendra Lodhi S/o Suryakant Lodhi Aged About 67 Years R/o-
Chitrakut Dham, Tahsil And Police Station Karvi (U.P.), Uttar Pradesh

2 - Kanshi Prasad Lodhi S/o Nathu Prasad Aged About 70 Years R/o-
Sinjora, Tahsil Kulpahar, P.S. Karvi (U.P.), Uttar Pradesh

... Appellants(s)

versus

1 - State Of Chhattisgarh Through- The Station House Officer
Charama, District- Kanker, Chhattisgarh., District : Kanker, Chhattisgarh

... Respondent(s)

For Appellants	:	Shri Sandeep Shrivastava, Advocate
For Respondent/State	:	Ms.Avelyn Juneja Gambhir, PL

(Hon'ble Shri Justice Arvind Kumar Verma)

Judgment on Board

23/03/2026

This criminal appeal under Section 374(2) of the Code of Criminal Procedure has been preferred by the appellants assailing the judgment of conviction and order of sentence dated 28.07.2018 passed



by the learned Special Judge (NDPS Act), North Bastar, Kanker in Special Case No. 43/2017, whereby the appellants have been convicted under Section 20(b)(ii)(B) of the NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for five years with fine of ₹10,000/- each, with default stipulation.

2. The prosecution story, as unfolded during trial, is that on 28.07.2017, Sub-Inspector Baleshwar Lahre, posted at Police Station Charama, District Kanker, received credible secret information from an informant to the effect that two persons, disguised as sadhus, were present near the Charama Bus Stand and were carrying illicit contraband ganja in bags and containers for the purpose of sale and were actively searching for prospective customers. Upon receipt of such information, the said officer reduced the information into writing in compliance with the provisions of Section 42 of the NDPS Act and made an entry in the *Rojnamcha Sanha*. Thereafter, he constituted a raiding party consisting of police personnel and proceeded to secure the presence of independent witnesses from the locality, namely panch witnesses. As the information disclosed the possibility of imminent movement of the suspects, the police party, along with the panch witnesses, proceeded without delay towards the indicated spot, i.e., the bus stand premises of Charama. Upon receipt of such information, a memorandum under Section 42 of the NDPS Act was prepared and recorded. Efforts were made to secure independent witnesses. Thereafter, the police party proceeded to the spot. At the bus stand premises, the appellants were found carrying bags and steel containers



and on questioning, they disclosed their identities. After compliance of Section 50 of the NDPS Act, search was conducted in presence of witnesses. Upon reaching the spot, two persons matching the description given by the informant were found present, carrying bags and a steel container.

3. The said persons were intercepted and, upon inquiry, disclosed their identities as Vijendra Lodhi and Kanshi Prasad Lodhi, the present appellants. The prosecution asserts that prior to conducting search, the appellants were apprised of their legal right under Section 50 of the NDPS Act to be searched before a Gazetted Officer or a Magistrate. It is alleged that the appellants consented to be searched by the police officer present at the spot. Thereafter, search proceedings were undertaken in presence of the panch witnesses. From the possession of appellant Vijendra Lodhi, the suspected contraband recovered was from a steel container: 3 kg 230 grams; from a plastic sack: 2 kg 950 grams and from another sack: 3 kg 420 grams.

4. Similarly, from appellant Kanshi Prasad Lodhi, from a steel container: 3 kg 210 grams; from a sack: 5 kg 350 grams total: 8 kg 560 grams. The recovered substance was identified as ganja based on its appearance and smell. Thereafter, the contraband was weighed on an electronic weighing machine, and samples of 50 grams each were drawn from each packet. The samples were separately packed, sealed, and marked, and the remaining bulk contraband was also sealed in accordance with the procedure. A seizure memo (panchnama) was prepared on the spot, detailing the entire process of recovery, sampling,



and sealing, in presence of the witnesses. The appellants were then formally arrested.

5. Subsequently, the seized articles along with the sample packets were deposited in the police station. The samples were thereafter sent to the Forensic Science Laboratory (FSL) for chemical examination. As per the FSL report, the samples tested positive for ganja (cannabis). After completion of investigation, including recording of statements of witnesses under Section 161 Cr.P.C., the police filed a charge-sheet against the appellants for the offence punishable under Section 20(b)(ii)(B) of the NDPS Act, 1985. After completion of investigation, charge-sheet was filed. Charges were framed under Section 20(b)(ii)(B) of the NDPS Act. The appellants denied the charges and claimed trial.

6. The learned trial Court framed charges accordingly. In order to bring home the guilt of the accused persons, the prosecution examined 12 witnesses, including the investigating officer, seizure witnesses, and other formal witnesses. Documentary evidence such as seizure memo, FSL report, and relevant case diary entries were also exhibited. The appellants, in their statements recorded under Section 313 Cr.P.C., denied all incriminating circumstances appearing against them and pleaded that they have been falsely implicated in the case. However, they did not lead any defence evidence.

7. Upon appreciation of the oral and documentary evidence, the learned Special Judge found the prosecution case proved and accordingly convicted and sentenced the appellants as mentioned



earlier.

8. The learned trial Court, upon appreciation of evidence, convicted and sentenced the appellants as stated above.

9. Learned counsel for the appellants submits that the impugned judgment is contrary to law and evidence on record. It is contended that there is non-compliance of mandatory provisions of Sections 42 and 50 of the NDPS Act, which vitiates the entire prosecution case. It is further submitted that the independent panch witnesses have not supported the prosecution case and have been declared hostile. He submits that the search was not conducted in presence of a Gazetted Officer or Magistrate, thereby violating statutory safeguards. It is also contended that there is violation of Section 55 of the NDPS Act as the seized contraband was not kept in safe custody. Further, it is argued that the weighing of contraband was conducted at the police station, creating serious doubt regarding authenticity of seizure proceedings.

10. Per contra, learned State counsel supports the impugned judgment. It is submitted that the prosecution has proved its case beyond reasonable doubt through reliable testimony of police witnesses. It is further contended that merely because independent witnesses turned hostile, the prosecution case cannot be discarded. The FSL report conclusively proves that the seized substance was ganja. It is therefore submitted that minor irregularities do not vitiate the prosecution case.



11. Heard counsel for the parties and their rival submissions and perused the records.

The following points arise for determination:

(i) Whether the prosecution has proved beyond reasonable doubt that the appellants were in conscious possession of contraband ganja?

(ii) Whether there has been compliance of mandatory provisions of the NDPS Act?

(iii) Whether the conviction and sentence recorded by the trial Court call for interference?

12. The trial court, upon meticulous appreciation of the oral and documentary evidence available on record, has recorded a categorical finding that the prosecution has successfully established that on 28.07.2017, the appellants were found in conscious possession of contraband ganja. The trial Court has placed reliance primarily on the testimonies of the prosecution witnesses, particularly the Investigating Officer and members of the raiding party, who have consistently deposed regarding receipt of secret information, constitution of raiding team, interception of the appellants, and recovery of contraband from their possession. The recovery of ganja to the extent of 9 kg 600 grams from appellant No.1 and 8 kg 560 grams from appellant No.2 stands duly proved through cogent and reliable evidence. The FSL report has been relied upon by the trial Court to conclude that the seized substance was indeed ganja, thereby lending scientific corroboration to the prosecution case.



13. The trial Court has further held that there is no material contradiction or inconsistency in the testimony of official witnesses so as to discredit the prosecution case. With regard to compliance of statutory provisions, the trial Court has recorded a finding that the procedural requirements under the NDPS Act were substantially complied with and no prejudice has been caused to the accused persons.

14. Upon cumulative consideration, the learned trial Court has concluded that the prosecution has proved its case beyond reasonable doubt and accordingly convicted the appellants under Section 20(b)(ii) (B) of the NDPS Act.

15. This Court has carefully re-evaluated the entire evidence on record, including the testimonies of prosecution witnesses, documentary exhibits, and the reasoning assigned by the trial Court. At the outset, it is to be noted that the recovery of contraband from the possession of the appellants stands supported by consistent and cogent evidence of the police officials forming part of the raiding party. The testimony of the Investigating Officer inspires confidence and is duly corroborated by other prosecution witnesses with regard to the manner of search, seizure, and preparation of documents. It is well settled that the evidence of official witnesses cannot be discarded merely on the ground of their official status, unless any material is brought on record to show animosity or motive for false implication.



16. In the present case, no such material has been elicited in the cross-examination of the prosecution witnesses to discredit their testimony. So far as the non-support of independent witnesses is concerned, it is equally well settled that their hostility does not ipso facto demolish the prosecution case, particularly when the official witnesses are found reliable. The seizure memo and other contemporaneous documents lend sufficient corroboration to the oral testimony of prosecution witnesses. The FSL report conclusively establishes that the seized substance was ganja. The chain of custody, though questioned, does not appear to have been so seriously compromised as to render the entire prosecution case doubtful.

17. With regard to compliance of Sections 42 and 50 of the NDPS Act, though certain minor discrepancies have been pointed out by the defence, the same do not go to the root of the matter so as to vitiate the trial. The Supreme Court has consistently held that substantial compliance of procedural safeguards, in absence of prejudice, would not invalidate the conviction.

18. In the present case, this Court does not find any material to hold that the appellants were prejudiced due to alleged procedural lapses. In the present case, the evidence on record does not inspire full confidence regarding strict compliance of Sections 42 and 50 of the NDPS Act. The NDPS Act is a stringent statute and requires strict compliance with procedural safeguards. The Supreme Court in ***State of Punjab vs. Baldev Singh, (1999) 6 SCC 172***, has held that compliance of Section 50 is mandatory. Similarly, in ***Karnail Singh vs.***



State of Haryana, (2009) 8 SCC 539, it has been held that Section 42 compliance is mandatory though with some flexibility.

19. In light of the aforesaid analysis, this Court finds that the findings recorded by the learned trial Court are based on proper appreciation of evidence and do not suffer from perversity or illegality. The prosecution has succeeded in proving beyond reasonable doubt that the appellants were in conscious possession of contraband ganja. Accordingly, the conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act is well-founded and calls for no interference. The conviction, therefore, is affirmed and remains unaltered.

20. It is not disputed that the appellants have remained in jail for about 1 year and one month. Upon cumulative consideration, this Court is of the view that though recovery of contraband is established, the prosecution case suffers from procedural infirmities. However, in the facts and circumstances, interference is warranted only with respect to sentence.

21. Having affirmed the conviction of the appellants, this Court now proceeds to consider the question of sentence. It is not in dispute that the quantity of contraband involved in the present case falls within the category of intermediate quantity. It is also borne out from the record that the appellants are not shown to be habitual offenders and there is no material to indicate their involvement in any other similar offence. Further, it is submitted and not controverted by the State, that the appellants have already undergone a substantial period of incarceration during the course of trial and pendency of the present appeal. The



incident pertains to the year 2017 and the appellants have faced the agony of criminal proceedings for a considerable length of time. Taking into consideration the totality of circumstances, including the nature of offence, quantity involved, antecedents of the appellants, and the period of incarceration already undergone, this Court is of the considered view that ends of justice would be adequately met by reducing the substantive sentence to the period already undergone.

22. Consequently, the appeal is partly allowed. The conviction of the appellants under Section 20(b)(ii)(B) of the NDPS Act, 1985, as recorded by the learned trial Court, is hereby affirmed. However, the sentence of rigorous imprisonment awarded to the appellants is modified and reduced to the period already undergone by them. The fine amount imposed by the trial Court shall remain unaltered. In default of payment of fine, the appellants shall undergo the default sentence as directed by the trial Court. The appellants are reported to be on bail. They need not surrender, in view of modification of sentence to the period already undergone, subject to payment of fine, if not already deposited.

Sd/-
(Arvind Kumar Verma)
Judge