
Hariom Dhakad Vs State Of Chhattisgarh

Criminal Appeal No. 1775 Of 2019

Court: Chhattisgarh High Court

Date of Decision: June 16, 2023

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 " Section 20(b)(ii)(c), 50, 55#Code
Of Criminal Procedure, 1973 " Section 313

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Harishankar Patel, Sakib Ahmed, Praveen Das, Vijay Kumar Deshmukh, Pawan
Kumar Sahu, Shivali Dubey

Final Decision: Allowed

Judgement

Arvind Singh Chandel, J

1. This criminal appeal has been preferred by appellants against the judgment of conviction and order of sentence dated 07.11.2019, passed in Special

Criminal Case No.47/2017 by which the learned Special Judge (NDPS Act) Jagdalpur, District Bastar, convicted accused /appellants under Section 20

(b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentenced them to undergo RI for 10 years with

fine of Rs.1,00,000/-.

2. The prosecution case, in brief, is this that on 6.9.2017 Sub-Inspector B.P. Joshi(PW-8) received secret information from the informant regarding

transportation of ganja from Jagdalpur to Madhya Pradesh in blue colour Maruti Suzuki Ecco car bearing registration number CG17-KL-1473. After

recording information in Rojnamchasanha and forwarding information to superior officers etc. he along with staff and witnesses reached the spot.

Police detained the car of aforementioned description and noticed there persons travelling in it. On enquiry, they disclosed their identity. After

informing them about their right to be searched under Section 50 of the NDPS Act and after issuing notice, police searched the car and found four

bags of ganja in the car. On weighing the same, it was found that the contraband recovered from the accused/appellant is 83 kilogram. Dehati Nalishi

was recorded on the spot. The accused persons were arrested and incriminating material was seized in presence of independent witnesses. Based on

evidence collected, crime under the provisions of NDPS Act was registered against accused persons. Seized articles were sent for chemical

examination to the Forensic Science Laboratory and from where report of Ex.P-42 was received on 18.9.2017. After completing investigation, challan

was filed by the police for the offence under Section 20 (b) (ii) (C) of the NDPS Act.

3. Prosecution in order to prove its case examined total eight witnesses. Statements of accused persons were recorded under Section 313 of CrPC in

which they denied all incriminating evidence appearing against them, pleaded innocence and false implication. Appellants have taken a defence that on

the date and time of incident, they were returning to Jagdalpur from Dantewada after attending funeral of their relative. On the way, police stopped

their car for checking, demanded illegal gratification and on their refusal, they have been framed in the offence in question. In support of their case,

they have examined defence witness Dhanurjai (DW-1).

4. After hearing counsel for the parties and appreciating evidence available on record, the Special Court vide impugned judgment convicted and

sentenced accused/appellants in the manner as described in Para-1 of this judgment. Hence this appeal.

5. Learned counsel for appellants would submit that without there being any cogent and clinching evidence, trial Court has convicted and sentenced

the appellants vide impugned judgment, which is liable to be interdicted. Referring to various documents exhibited by the prosecution, it is argued by

the counsel that various column/entries were left blank, no explanation in this regard has been offered by the Investigation Officer and therefore, it

appears that all the documents were prepared while sitting in the police station, which makes the entire prosecution story doubtful. It is further argued

by counsel that both independent witnesses of search and seizure have not supported the case of prosecution and turned hostile and therefore there

was no acceptable evidence for the recovery.

Further referring to the statement of PW-3 constable Tularam Kashyap, it is argued by the counsel that this witness also categorically deposed that he

was not present on the spot and not made any seizure of contraband. Further, in all the documents prepared by PW-8, description of vehicle from

which contraband was stated to have been seized is mentioned as "blue colour four wheeler vehicle Maruti Suzuki Echo car bearing registration

No.CG17-KL-1473, but in the seizure memo Ex.P-13, Investigating Officer has mentioned the vehicle number as MPS-CA-0372. As per statement

of Investigation Officer, the appellants were using the vehicle with changed number plate. In this regard no punchnama or other documents was

prepared by the Investigating Officer nor it has been mentioned in Dehati Nalishi as well as FIR and document which have been sent to higher

officials by the Investigating Officer, therefore, the defence which was taken by the appellants appears to be genuine.

With regard to non-compliance of mandatory provisions of the NDPS Act, it is argued by the counsel that in this case the prosecution has not

submitted copy of Malkhana register before the trial Court nor examined Malkhana Muharrir, therefore, it is established that provisions under Section

55 of the Act have also been not duly complied with. Lastly it is argued by the counsel that there is delay in sending the sample. As per statement of

PW-5 Constable LR. Thakur, he received sample packet from Malkhana on 8.9.2017 and deposited the same in FSL on 11.9.2017. The prosecution

has not explained where the sample was kept by the constable from 8.9.2017 to 11.9.2017. Thus, conviction of appellants is based merely on the

evidence of Investigating Officer regarding memorandum and seizure of contraband, which does not find corroboration from other evidence, and

therefore it creates a serious doubt about the involvement of these appellants in the alleged offence. The trial Court should have extended benefit of

doubt to the appellants and hence, they are entitled for acquittal.

6. On the other hand, learned State Counsel opposing the prayer of learned counsel for appellants, would submit that statement of Investigating

Officer PW-8 is fully reliable, therefore, trial Court has rightly convicted the appellant. Finding recorded by the trial Court is based upon proper

appreciation of evidence available on record, hence, no interference is required.

7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.

8. Undisputedly, PW1 Bhagat Singh Thakur and PW-6 Dhanurjay Netam, who are independent witnesses, have not supported the case of prosecution

and turned hostile. PW-3 Constable Tularam Kashyap is the person, who according to prosecution, was present with the Investigating Officer on spot

and prepared Panchnama EX.P/10 & weighing machine verification memo Ex. P/9, but in para-2 & 3 of his cross-examination, he has admitted that

he was present on spot along with accompanying staff and therefore, he does not know names of persons who proceeded to the spot. This witness

also denied to have verified weighing machine or contraband. He has also denied his signature on Ex.P-9 & Ex.P-10.

9. PW-4 Tuleshwar Kashyap is the Patwari who prepared the spot map (Ex.P-21).

10. Lekhraj Thakur (PW-5) is the Constable who had deposited seized samples of contraband in the FSL, and obtained its receipt (Ex.P-22). Sub-

Divisional Officer (Police). This witness has stated in his cross-examination that on 9.9.2017 he reached Raipur and deposited the samples in FSL on

11.9.2017. He has admitted that from 8.9.2017 to 11.9.2017 the samples were in his possession.

11. Fagnuram Kashyap (PW-7) is the Sub-Divisional Officer (Police) and he has supported the prosecution case.

12. B.P. Joshi (PW-8) is the investigating officer. He has stated in his Court statement according to the case of prosecution. As per Court statement

of this witness as also documents prepared by him in the course of investigation, he received information regarding illegal transportation of contraband

(ganja) in a blue colour Maruti Suzuki Ecco car bearing registration number CG17-KL-1473. He recorded said information in Rojnamchasanha

(Ex.P/28) and thereafter forwarded the same to his superior officer vide Ex.P-24. Thereafter, he went to the spot along with accompanying staff and

independent witnesses; detained the car and during search, seized contraband from inside the car.

13. On perusal of the documents prepared by him, it is seen that in all the documents it has been mentioned that blue colour four wheeler was

intercepted and on search, contraband (ganja) was recovered from this vehicle. Samples were prepared from the seized contraband and thereafter,

contraband and vehicle were seized vide seizure memo Ex.P-13. In seizure memo Ex.P-13, which was prepared on 6.9.2017, it has been mentioned

that accused persons were driving car using changed number plate. Thereafter, the Investigating Officer prepared sample seal memo Ex.P-4, arrest

memo of appellants Ex.P-16, P-17 & P-18, Dehati Nalishi (Ex.P-35) on 6.9.2017 and registered FIR (Ex.P-39) at 20:30 hrs after returning police

station.

14. As per case of prosecution itself, PW-8 sent information regarding entire process to the higher officials vide ExP/41 but in none of any above

mentioned documents this fact is mentioned by him that number plate of vehicle was changed and no explanation has been offered by him during his

examination before the Court below. It also appears from the record that PW-8 has not prepared any memo regarding bogus number plate of vehicle.

Even the statement of registered owner of vehicles of aforementioned two registration numbers were recorded by him. This witness has not prepared

any panchnama mentioning chasis and engine number of vehicle from which contraband (ganja) was seized. In absence of corroboration from any

independent witness, these lapses on the part of investigating officer, which go to the root of matter, assume greater importance and sufficient for

rejection of whole evidence of investigating officer. In light of defence of appellants that on account of their refusal to pay bribe, they have falsely

implicated in crime, the lapses on the part of investigating officer should have been taken in favour of appellants and the trial Court ought not to have

relied upon sole testimony of investigating officer (PW-8) to convict the appellants.

15. With regard to the non-compliance of provision of Section 55 of the NDPS Act, this Court in the matter of Narendra Bhushan Dubey vs. State of

Madhya Pradesh (now CG), reported in 2011 (1) CGLJ 259 laid down the consequence of non-compliance of Section 55 of the NDPS Act. Para-18

of said judgment reads as under:-

“18. The Investigating Officer, who was the officer incharge of the police station and who seized the contraband has been examined by the

prosecution as PW-4. In his cross-examination, he has stated that seized ganja was sealed with the seal of the police station. In his cross-examination,

he admits that he has seal in his own name. The mandate to Section 55 requires the officer in-charge of the police station to seal the sample with his

own seal. However, no explanation has come forth from the prosecution even in the cross-examination of R.K. Rai (PW-4) as to why the officer in-

charge did not affix his seal as required under Section 55 of the Act. This aspect assumes importance as in the cross-examination, a suggestion has

been given that the incident happened in the night at some other place and the accused was sent to the police station along with the constable and the

Investigating Officer had gone to Sakari where signatures of the witnesses were taken on all the documents. Section 55 of the Act of 1985 requires

the officer-in-charge of police station to take charge of and keep in safe custody all seized articles. The statutory scheme of the Act engrafted under

Section 55 requires the officer-in-charge of the police station to seal all the samples with his own seal. The legislative intention is that there should be

fair investigation for keeping the seized article in safe custody of the highest officer of the concerned police station so as to eliminate the possibility of

the sample being tampered with till the same reaches the hands of the chemical examiner. Under provision contained in Section 55 such a duty has

been enjoined upon the officer in-charge of the police station with the manifest object that the senior officers can be trusted to be fair in investigation

and not indulging in dubious practices. When the prescribed procedure is abandoned, it gives rise to gnawing suspicion particularly when in the present

case, the officer in-charge/S.H.O. himself had seized the articles.

16. On examination of the evidence available on record shows that the prosecution has not examined Malkhana Muharrir before the trial Court nor

produced Malkhana register, therefore, there is no material available on record to show that after returning police-station this witness, who was the

Sub-Inspector, handed over the contraband and sample packets to the SHO and thereafter the concerned SHO put his seals and handed over to the

Malkhana Muharrir for depositing it. Thus in this case there is clear cut non-compliance of provision of Section 55 of the Act.

17. On minute examination of the above, it is clear that in this case the independent witnesses (PW-1 & PW-6) have not supported the case of

prosecution. PW-3 Constable Tularam Kashyap, who is stated to be present on spot and prepared the documents, has also not supported the

prosecution case. Whole evidence of the Investigating Officer has already been rejected on account of lapses going into root of the case. Prosecution

has not able to establish compliance of provisions of Section 55 of the NDPS Act, which also gives rise to gnawing suspicion, particularly when in the

case at hand, the investigating officer himself had seized the articles.

18. In the result, criminal appeal is allowed. Conviction and sentence of appellants under Section 20 (b) (ii) (C) of the NDPS Act and sentence

imposed under that section are hereby set aside. Appellants are reported to be in jail. They are directed to be set free forthwith if not required to be

detained in any other case.