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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 2576 /2000

Appellants:-

1. Ashok Singh S/o Balwant Singh  
aged about 20 years, Resident  
of Budhar, P.S. Amlai Distt.  
Shahdol M.P.
2. Salam Khan S/o Anwar Khan aged  
about 29 years, Resident of Dhanpuri,  
Colliery No.3, P.S. Amlai District  
Shahdol M.P.

V/S

Respondents:-

State of Madhya Pradesh Through the  
Police Station Jagdalpur, District  
Jagdalpur M.P.

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374(2)  
of THE CRIMINAL PROCEDURE CODE 1973.

10209

Filed on 12/10/24  
by Shri. Suresh Chandra  
Advocate

R.A.P.

W. G. O.

CLERK

/o. Advocate Genl  
J. P. JABALPUR

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 2576/2000

Ashok Singh and another

vs.

State of M.P. (C.G.)

A N D

CRIMINAL APPEAL NO. 11/2001

Ashok Singh

vs.

State of Chhattisgarh

J U D G M E N T

HON. R. S. GARG, J :

The appellants being aggrieved by the judgment dated 30-9-2000 passed in Special Case No. 11/2000 by the learned Special Judge (N.D.P.S.), Jagdalpur convicting the appellants under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act sentencing the appellant Ashok Singh to undergo R.I. for three years and pay fine of Rs. 7500/-, in default of payment of fine to undergo further R.I. for one year and sentencing accused Salam Khan to undergo R.I. for 2½ years and pay fine of Rs. 5000/-, in default of payment of fine to undergo R.I. for six months, have filed Cr.A. No. 2576/2000.

2. It appears that on behalf of accused Ashok Singh, Criminal Appeal No. 11/2001 was also filed.

3. This judgment shall finally dispose of Cr.A. Nos. 2576/2000 and 11/2001.

4. The prosecution case in brief is that on 13-1-2000 at about 10.35 p.m., Assistant Sub Inspector Tilu Singh (P.W.1) received an information from the informer that some persons have gone towards village Borgaon, Orissa for bringing contraband ganja and they were likely to proceed towards Raipur. The said Tilu Singh recorded the information and sent a message to his City Superintendent of Police (C.S.P.). Finding shortage of time, he prepared another panchnama and recorded his belief that if the warrants are awaited, then the miscreants or wrong doers were likely to flee away from his jurisdiction. A copy of this panchnama was also sent to C.S.P.. On night intervening 13th and 14th of January, 2000, at about 2.00 a.m., said Tilu Singh in presence of the witnesses stopped Mahindra Utility Armada bearing registration no. MP-18/7849. Said Tilu Singh informed the said two persons that he had the information that the occupants of the vehicle were carrying contraband ganja. Notice under Section 50 of the Act was given to them. In the personal search, nothing incriminating was recovered but in the search of the vehicle, two bags containing 15kg. and 25kg. ganja were recovered. Eight samples of 25 gms. each were prepared, the property was seized, the accused and the contrabands were brought to the police station. It would be noteworthy that according to the A.S.I., Tilu Singh, after affixing his seal on the contrabands, etc., he had prepared ~~the sealed~~ panchnama. After coming back to the police station, the first information report was registered, the contrabands were kept in the Malkhana and a further information as required under Section 57 of the Act was sent to the Officers. The samples were

sent to the F.S.L., who under their report informed that the samples were of ganja.

5. Being armed with the seizure memo, statements of the witnesses and the F.S.L. report, the prosecution agency filed the challan against the accused. The accused persons denied commission of offence, therefore, they were put to trial. After recording the evidence and hearing the parties, the trial court convicted and sentenced the accused persons as referred to above.

6. Shri Pandey, learned counsel for the appellants submits that as there was absolute non-compliance of Sections 42 and 50 of the Act, the appellants deserve to be acquitted. According to him, the prosecution has failed in proving that the report in relation to information, panchnama and the belief panchanama were sent to the C.S.P., therefore <sup>and</sup> as there was non-compliance of Section 50 of the Act, the accused be acquitted.

7. Shri Ranveer Singh, learned counsel for the State, submits that from the statements of P.W.1 A.S.I., Tilu Singh, it would clearly appear that he scrupulously followed the provisions contained under Sections 42, 50 and 57 of the Act and as there are no violations of the mandatory legal provisions, the accused cannot be acquitted.

8. I have heard the parties at length and have gone through the records.

9. P.W.1 Tilu Singh has clearly stated in his statements that after receiving the information he recorded the same and prepared the panchnama Ex.P/1. He has proved the said panchanama. He has further proved

that he had sent the information to the C.S.P. under Ex.P/2. He has further certified that Ex.P/2 contains the receipt signatures of the office of the C.S.P..

10. In paragraph 2 of his statements, he has further stated that looking to the urgency in the matter he thought that if warrants were awaited, the accused could run away, therefore, he again prepared a panchanama. He had prepared the panchnama under Ex.P/3. He has further proved that information of this panchnama was also sent to the C.S.P..

11. In the cross-examination of this witness, nothing has been asked about the preparation of the panchnama or sending of the information to the C.S.P.. The only question asked in the cross-examination was that the witness did not mention the time in the said panchanama prepared under Section 42 of the Act. In paragraph 22, he had further stated that he had sent the information to the C.S.P..

12. From the statements of this witness, it would clearly appear that he had prepared the two panchnamas and sent the information to the Superior Officers.

13. Shri Pandey, learned counsel for the appellants, submits that as the Officer or Clerk from the office of C.S.P. have not been examined to prove the receipt, it must be held that no information was sent.

14. Unfortunately, this argument loses sight of the fact that in the cross-examination not even a single suggestion was given to the witness that the signatures on the receipt were forged or were not of the Officer who had received the information. In my opinion, the prosecution was successful in proving compliance of Sec. 42 of the Act.

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15. So far as the question of non-compliance of Section 50 of the Act is concerned, from the notices Ex.P/4 issued to the accused Salam Khan and Ex.P/6 issued to Ashok Singh, it would clearly appear that notices for personal search were given to these two accused persons and they were given the option that if they so wanted, their search could be taken by the Magistrate or a Gazetted Officer. On these two notices, the accused in their own hand writing have clearly mentioned that they were ready and willing to give their search to the said Officer.

16. After going through the statements of the witnesses and the documents, I am unable to hold that provisions of Section 50 of the Act were not complied with.

17. No other point was pressed into service in relation to the merits of the matter. On the merits, I am unable to hold that the prosecution has failed in proving the guilt of the accused.

18. At this stage, Shri Pandey, learned counsel for the appellants, submits that the appellants are in jail since 14-1-2000, therefore, the sentence be reduced to the period already undergone.

19. Learned counsel for the State on the other hand, submits that looking to the quantity of ganja, the quantum of sentence is proper and does not call for any interference.

20. From the records, it would appear that the two accused persons were carrying about 40 kg. ganja. The submission of the learned counsel for the appellants that the prosecution has failed in proving that they were

drug-peddlers, should not detain this Court unnecessarily because from the facts it would clearly appear that they were carrying 40 kg. ganja in a vehicle which in itself would be sufficient to presume that they were consciously engaged in the business of contrabands. The court below in its discretion has awarded a legal and proper sentences to the appellants.

21. Even on the question of sentence, I am unable to interfere in the matter.

22. Both the appeals are dismissed.

Sd/-  
R.S. Garg  
Judge  
25-7-2001.

H/-