

[2022] 1 S.C.R. 1020

DAYALU KASHYAP

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 130/2022)

JANUARY 25, 2022

[SANJAY KISHAN KAUL AND M.M. SUNDRESH, JJ.]

Narcotics Drugs and Psychotropic Substances Act, 1985 – s.50 – Gazetted Officer su nattaba, Magistrate su nattaba, Sub-Inspector amana appellant gi Kanwad [waa natraga lee gi cheitek; potlam pubabda sijindaba] amada polythene bag amada haplaga purakpa ganja pharami – Appellant adu u/ s.20(b)(ii)(c), NDPS Act gi makhada conviction pikhi – State of Rajasthan v. Parmanand & Anr. [2014] 3 SCR 522 da haikhibagi matung inna appellant na mahak masada thiba humbagi thabak chattakhiba Officer adu aine (statute) gi wangbadani, marum aduna s.50 gi niyom thugaibani, maram aduna madu chatnaba yaroi – phadok tare: maramdi ganja adu mahakki Kanwad ta purambagi phabani, masamaktagi phadragasu appellant adu dandi kokhide – adumakpu appellant adu chahi 10 mapung phana miyat taraba matungda mangonda pikhiba fine adu pidabagi damakta chahi 1 sangdokkadaba adugi tha 6 matungda bondi adu thadokhi.

State of Rajasthan v. Parmanand & Anr. **(2014) 5 SCC 345 :**

[2014] 3 SCR 522; State of Punjab v. Baldev Singh 1999 (6)

SCC 172 : [1999] 3 SCR 977 – referred to.

Case Law Reference

[2014] 3 SCR 522 referred to Para 4

[1999] 3 SCR 977 referred to Para 4

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 130 of 2022.

From the Judgment and Order dated 28.03.2019 of the High Court of Chhattisgarh, Bilaspur in CRA No.857 of 2011.

Devansh A. Mohta (AC), Adv. for the Appellant.

Sumeer Sodhi, Gaurav, Advs. for the Respondent.

The following Order of the Court was passed:

ORDER

1. Leave gi ayaba pire.
2. Mangda leiriba appeal asi tarik 11.09.2010 gi ayuk pung 10.30 taba matamda Sub-Inspector K.S. Singha (PW-5) na akaknaba pao phangbadagi Bhaisabeda amasung Pithapur phaoba lambida Kanwad amadagi appellant aduna puduna chatlamba asangba machugi polythene bag amada puduna chatlamba ganja phakhi. Hairiba appellant adu Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') gi makhada Special Judge na appellant adubu Section 20(b)(ii)(c) of the NDPS Act gi matung inna chahi 10 akanba bondi amasung Rs. 1 lakh fine gi rai takhi. Appellant na High Court of Chhattisgarh ta appeal tourakkhi adubu tarik 28.03.2019 gi order mautng inna appeal adu loukhide.
3. Appellantna chahi 10 miyat taraba matung amasung mahakna fine piba ngamdabagi maram oiduna chahi 1 gi sentence sangdokpa adu chatakhhi. Hairiba wapham asi tarik 01.02.2021 da bail gi matangda khannnaba houkhi. Tarik 01.03.2021 dasu case asigi matangda khanaba chatthakhi, amsung hairiba case asi NDPS Act gi Section 50 gi matanga khannaba nattana atei khanabagi maram leikhide. Appellant aduna chahi 10 mapung bondi taraba amasung fine pidabagi tha 6 amasu miyak chatharaba matungdadi court na mahakpu thadokpagi ayaba pikhi. Asum na tarik 03.03.2021 da appellant adu thadokhi.
4. Appellant gi learned counsel na pukhatlakpa Officer (PW-5) gi testimony na Para 6 da asumna hairi:

“6. Akaknaba pao phangbadagi pung 12.45 taba matamda Pithapur Thothapara Chowk, Murumroad gi nakanda accused gi Kanwad da ganja pukhre haina pao

khanbada gi tangai phadana thiba humbagi thabak chathagi. Gazetted Officer natraga Magistrate natraga eihakna thiba yabagi maram sugaina khanghalaba matungda accused na eihakna mahakpu “search” toubagi ayaba pirakhi. Adugi pikhiba notice adu Exhibit P.5 part C oina makhada eshagi sahi touduna pijari. Hairiba numit asigi pung 1:00 taba matamda accused gi ayaba yaorabanina ei amasung eigi staff na thiba humbagi thabak chathagi. Masadagidi kari gumba amata phangkhide, adubu mahaki Kanwad tagi asanba machugi polythene da yomba mayom ama phangkhiba adu Search memo (Exhibit P.6) part C oina makhada eigi sahi touduna thamjari. Asumna, ganja manba polethene gi mayomsing adu phangkhi. Eihaki sahi ga loinana hairiba asi Search Memo Exhibit P.7 part C to C oina thamjari.”

5. NDPS Act gi Section 50 gi sub-Section (1) matung inna appellant ta pikhiba “choices” [haibadi Gazetted Officer natraga Magistrate] adu nattaba ahum suba ama khallo [haibadi Eishana check toubu] haibasi aine gi matung inna amasung palliba Section gi matung inna ayaba leite. Learned counsel na *State of Rajasthan v. Parmanand & Anr.* – (2014) 5 SCC 345 gi Para 19 asi mahak gi mateng oina puthorakhi. Hairiba rai asimak Court asigi Constitution Bench gi *State of Punjab v. Baldev Singh* – 1999 (6) SCC 172 da takhiba rai karigumba Gazetted Officer natraga Magistrate amagi mamagda tangai phadana puthokpa gi darkar lei haibadu khanghandana accused masadagi aine na yadaba potlam phai haiduna maral siba amasung dandi phangba maram chade haibasine. Natraga Officer (SI) masana thiba humbagi thabak toure haina accused gi ayaba loubadu aine (statute) na yade. Maram aduna accused dagi illegal oiba potlam phange haibasi aine da chatnaroi.
6. Mamangda pankhriba case asigi wari matung inna, accused masadagi natrabasu Kanwad ta puramba polythene bag tagi potlam phangkhi haibasi achumbani. Learned counsel na pukhatlakliba accused masada chatthakhiba thiba humbagi thabak adu aine na yadabani amasung NDPS Act gi Section 50 aranba mayongda pankhibani haibadsi yade. Marum aduna appellant gi learned counsel na pukhatlakliba wapham asi eikhoina ayaba piroi.

7. Pukhatlakliba wapham asidagi makha taba khannaningai leitaba maram oiduna, appellant gi “relief” asi piba yaro amasung “appeal” asi kakle; masa masagi achangba khrasa puthokchagadabani.

Divya Pandey

Appeal dismissed.

(Assisted by : Deepak Panwar, LCRA)