

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1716 of 1999**

- The State of Madhya Pradesh (now Chhattisgarh) ---- Appellant
- Versus**
- Harishankar Gupta son of Chhotelal
aged 51 years, R/o Pukhraya, Distt. Kanpur (UP) ---- Respondent

For appellant/State : Shri Chitranjay Patel, Govt. Advocate
 For Respondent/Accused : Shri Anurag Verma, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****01/04/2015**

1. Challenge in this appeal is to the judgment of acquittal dated 10-12-1998 in Special Case No. 16/1998 by the Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (in brevity 'NDPS Act'), Jagdalpur (MP now CG) whereby and whereunder learned Special Judge after holding the appellant not guilty for illicit possession of 30 kg Ganja (Cannabis) acquitted the appellant under Section 20-B of the NDPS Act prior to substitution of Act 9 of 2001 with effect from 2-10-2001.
2. Acquittal is impugned on the ground that in spite of sufficient evidence, learned court below has acquitted the respondent and thereby committed illegality.
3. As per case of the prosecution, on 22-6-1998 at about 11.40 pm near police station Sukma at Main Road, respondent was travelling in a jeep along with two other persons. P.W. 1 R.S. Naik, Additional Superintendent of Police, Sukma during routine check of vehicles, stopped a jeep. The respondent and other 2 persons were interrogated. Respondent informed his name and admitted that three bags kept in jeep belong to him. Thereafter the IO P.W. 1 R.S. Naik gave him notice under Section 50 of the NDPS Act informing his legal right that he may be searched by the Magistrate or may be searched by the IO as he himself is a gazetted officer. By accepting the notice respondent gave his consent to be searched by the IO. Thereafter 3 bags were searched. On physical examination Ganja Cannabis was found in those three bags which were duly weighed. Physical identification memo was prepared vide Ex. P-12. Taul Panchnama was prepared vide Ex. P-13. Samples of 50 gm. were taken from each bag. Remaining ganja and samples were duly sealed and seized vide seizure memo Ex. P-15. Samples were sent for chemical analysis through Superintendent of Police, Dantewara to FSL. The FSL gave report Ex. P-15 and thereby confirmed the presence of ganja. Panch

witnesses also signed in the proceedings. As directed, R.C. Roy, ASI (P.W. 3) wrote FIR Ex. P-8, also arrested the accused vide Ex. P-21. Spot map was prepared vide Ex. P-24. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. I.O. P.W.1 R.S. Naik and P.W. 3 R.C. Roy, ASI also investigated the illicit possession of ganja found with two other persons in the jeep separately and for that separate registration of FIR and filing of charge sheet was made. After completion of investigation, charge sheet was filed on 22-7-1998 before the Special Judge, Jagdalpur who conducted trial.

4. During trial, respondent was charged for the offence under Section 20(b) of the NDPS Act. Respondent denied the charges and prayed for trial. During trial prosecution examined 4 witnesses to prove guilt of the respondent. Statement of the respondent under Section 313 of the Code of Criminal Procedure was recorded in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.

5. After providing opportunity of hearing to the parties, learned Special Judge acquitted the appellant.

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

7. Learned counsel for the State vehemently argued that in the present case, acquittal is based on non-compliance of mandatory provisions of Sections 42, 50 and 57 of the NDPS Act. In the present case, P.W. 1 R.S. Naik was conducting routine check of vehicles and the jeep in question was stopped and on inquiry, the alleged contraband article Ganja was recovered from respondent. Ganja was also seized from two other persons, for which separate investigation was conducted. If the contraband article ganja was recovered not upon information of any information, but on routine checking of vehicles, provisions of Section 42 of the NDPS Act do not attract. The IO during investigation gave notice under Section 50 of the NDPS Act regarding legal right of the respondent about search before Magistrate or Investigating Officer who himself is a gazetted officer. The respondent gave in writing consent to be searched by the IO. Hence Section 50 of the NDPS Act is complied with. So far as Section 57 of the NDPS Act is concerned, as per statement of P.W. 1 R.S. Naik in para 16, the IO may have informed Magistrate or superior officer about arrest and seizure as later part of investigation was conducted by P.W. 3 R.C. Roy, ASI. It is nowhere proved otherwise that the report was not sent. Looking to the entire facts and circumstances of the case, though panch witness P.W. 5 Badriprasad Jaisawal has not supported the story of the prosecution and though P.W. 2 Ramchandra has not supported weightment of seized ganja but on the basis of statement of P.W. 1 R.S. Naik and P.W. 3 R.C. Roy, ASI their statements are trustworthy and reliable. Hence the trial Court erred

by acquitting the respondent for the offence. The appeal may be allowed and the respondent may be convicted and sentenced properly.

8. Learned counsel for the respondent submitted his arguments and stated that the compliance of Sections 42, 50 and 57 is mandatory, also the panch witnesses P.W. 4 Badriprasad Jaiswal has not supported the story of prosecution. Only the police officials are supporting the prosecution story which is highly suspicious and it would not be safe to convict the respondent on the basis of material available before the trial Court. The trial Court has rightly acquitted the respondent. Hence the appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.

10. Upon minute scrutiny of the evidence, it appears that the appellant and other persons were detained during a routine check of the vehicle by PW. 1 R.K. Naik and during check of a jeep contraband article ganja was recovered from the possession of the respondent. If during routine check and other activities, any contraband article is recovered or noticed in possession of accused then provisions of Section 42 of the NDPS Act do not attract. Section 42 of the NDPS Act is only applicable where there is an information regarding the contraband article in any building, conveyance or enclosed place. If such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, then only the police officer under Section 42 of the NDPS Act may proceed without obtaining search warrant and authorization. In the present case, compliance of Section 42 of the NDPS Act was not required.

11. So far as compliance of Section 50 of the NDPS Act is concerned, the IO P.W. 1 R.S. Naik gave notice as required under Section 50, NDPS Act informing the legal right of the respondent regarding search. The respondent gave in writing that he is ready to be searched by the IO himself. Thereafter search of the belongings of respondent was conducted. In the considered of this Court, prosecution has not violated the requirement of Section 50 of the NDPS Act.

12. So far as compliance of Section 57 of the NDPS Act is concerned, it is mandatory for the person who makes any arrest or seizure under this Act, to make a full report of all the particulars of such arrest or seizure to his immediate official superior. P.W. 1 R.S. Naik who conducted initial investigation admitted in para 16 of his cross-examination that he had not informed regarding seizure to his immediate superior officer. This witness has stated that the IO may have informed the Magistrate or the senior officer. The rest part of the investigation was conducted by P.W. 3 R.C. Roy. This witness has also categorically stated in para 13 of his cross-examination that he had not informed his senior officer regarding

seizure and arrest. With this, there is no compliance under Section 57 of the NDPS Act. Provisions of this Act are mandatory. By non-compliance of above, in the considered view of this Court, the trial Court has rightly acquitted the respondent for which no other view may be taken.

13. So far as non-corroboration of panch witnesses for the prosecution story is concerned, it is settled law if the investigating officer's statement is trustworthy and acceptable, the same may be assessed on its own strength and if found trustworthy corroboration of panch witnesses is not necessary under the law. Therefore, I am of the considered view that by non-corroboration of the story of the prosecution by panch witnesses, there may not be any doubt on the statement of P.W. 1 R.S. Naik and P.W. 3 R.C. Roy as their statements have to be valued on their own strength that they are cross-examined at length but nothing is elicited as to make their statements suspicious. Non-corroboration by panch witness is not an acceptable ground for acquittal of the respondent.

14. To part with, as there is non-compliance of the provisions of Section 57 of the NDPS Act which is mandatory in nature, and no other evidence regarding any type of communication to superior official regarding arrest and seizure is available on record, therefore it goes to show that prosecution has utterly failed to comply with the provisions of Section 57 of the NDPS Act which is mandatory and the judgment of acquittal cannot be converted into judgment of conviction.

15. Having considered the facts and circumstances of the case and material on record, in the considered opinion of this Court, there is no scope of interference in the impugned judgment of acquittal.

16. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

Sd/
Chandra Bhushan Bajpai
Judge