

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Acquittal Appeal No.72 of 2016**

State of Chhattisgarh Through District Magistrate Janjgir Champa  
Chhattisgarh.

**---- Appellant****Versus**

1. Devendra Kumar S/o Bhajoram Satnami Aged About 35 Years R/o Bartunga, P.S. Sarangarh, Distt. Raigarh Chhattisgarh.
2. Amrit Kumar S/o Ajit Prasad Yadav Aged About 26 Years R/o Godham, P.S. Sarangarh, Distt. Raigarh Chhattisgarh.

**---- Respondents**


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| For Appellant   | : | Shri Satish Gupta, Govt. Advocate. |
| For Respondents | : | Shri Ashish Gupta, Advocate.       |

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**Hon'ble Shri Justice P. Sam Koshy****Order on Board****01.08.2016**

1. The State by this acquittal appeal challenges the judgment dated 20.03.2015 passed in Special Criminal Case No.9 of 2014 whereby the respondent persons have been acquitted from the charges under Section 20(B) (I)(II)(B) of the Narcotis Drugs and Psychotropic Substance Act, 1985 (in short, NDPS Act).
2. Facts in brief relevant for adjudication of the case is that, on 28.06.2014 the Police Station, Sarangarh, received a secret information that Swift Car bearing registration No.CG-13-C-9985 is coming from Kharsia carrying illegal contraband-Ganja. Thereafter, a trap was laid on the basis of said information and the said vehicle was intercepted and in the course of search it was found that the

respondents were travelling in the said car and they were carrying about 18 kg of Ganja. The said contraband and the vehicle was seized and the respondents were taken into custody. After completion of formalities, 50 gramme each of samples were sent for laboratory for chemical examination at Raipur, which gave a positive report of contraband being Ganja. Subsequently, on completion of the investigation, the matter was put to trial before the Special Judge (NDPS), Janjgir Champa.

3. The prosecution in all examined five witnesses, whereas the accused did not lead any defence witness. The trial court finally vide judgment impugned granted benefit of doubt to the accused persons and acquitted them from the offence under Section 20-B of the NDPS Act leading to filing of this acquittal appeal by the State.
4. Assailing the impugned judgment, counsel for the State submitted that the same is bad in law for the reason that though there is an order of clear compliance of statutory and mandatory provisions of law, but the trial court has not discussed as to what are the statutory mandatory provisions which have not been complied with. The finding of trial court is also bad in law for the reason that it is a case where though seized witnesses have turned hostile, but the investigating officer himself has sufficiently proved the case of prosecution and that was sufficient for holding the respondents to be guilty of having committed the said crime. It is next submitted that the court below has erred in not appreciating the fact that the prosecution infact had produced all the evidence establishing the

compliance of the provisions of the NDPS Act during the course as is required to be followed under the NDPS Act right from the stage of receiving secret information till the case is filed before the court.

5. However, during the course of argument on suggestion being put to State counsel to convince the court from the evidence which has been led by the prosecution to show that the mandatory provisions has infact been complied in the course of investigation, the State counsel could not submit anything in this regard and simply made a bald statement that it was the duty casted upon the Presiding Judge dealing with the case to refer the statutory and mandatory provisions of the NDPS Act was complied with or not.
6. On the other hand, counsel appearing for the respondents submitted that order under appeal does not warrant any interference as paragraphs 8 & 9 of the said judgment clearly deals with shortcomings on the part of the prosecution in the course of conducting the trial. The trial judge having specifically dealt with the evidence led by the prosecution to show that the compliance of Sections 55 & 57 of the NDPS Act has not been made and only because non reference of Section alone would not vitiate the findings of the court below and therefore prayed for rejection of the appeal.
7. Having considered the arguments advanced by either side and on perusal of record what is reflected from the record is that PW-1, Rajkumar and PW-2, Arman Husain, were two seizure witnesses and both of them have not supported the case of the prosecution and have turned hostile. Since the seizure witnesses were the only two

independent witnesses examined by the prosecution, but they have not supported the case of prosecution and have turned hostile, the entire evidence revolves around the departmental witness. Since the independent witnesses have not supported the case of prosecution and have turned hostile, the deposition of departmental witness have to be dealt with more carefully.

8. PW-3, Lambodhar Patel, the Investigating Officer, in his evidence in the cross examination has accepted the fact that initiation of the proceedings had not been intimated to the higher authorities. Further, from the evidence of PW-3, it is also established that the procedure required of taking consent of the accused persons before search and seizure proceedings have not been applied in the instant case, neither had the accused person informed of their right of being searched through a gazetted officer or a magistrate. Likewise, PW-5, Leos Minj, the Head Constable, witness in respect of contraband being sent to the Malkhana, in his cross examination has admitted the fact that there was no entry in the register in respect of sample of the seal by which the seized contraband was sent for being stored at Malkhana. He further submits that seized contraband was not sent for chemical examination. These again are a clear violation of the provisions of Sections 55 & 57 of the NDPS Act.
9. In the absence of proper compliance of Section 55 of the NDPS Act, the prosecution has miserably failed to adduce evidence establishing the fact that the sample which were collected for being sent for chemical examination was the same contraband which was allegedly

seized from the possession of the respondents, which also is a vital piece of deficiency and lacuna on the part of the prosecution and the benefit of which would definitely go in favour of the accused persons.

10. In view of non compliance of the aforementioned statutory and mandatory requirement of Sections 55 & 57 of the NDPS Act, it can be safely held that the prosecution has not been able to establish the case against the respondents beyond reasonable doubts. Even otherwise, even for the slightest of deficiency or lacuna, the benefit of doubt would go to the respondents and in the instant case as there has been no proper explanation or justification being given by the State counsel to establish compliance of Sections 55 & 57 of the NDPS Act.
11. In view of above, this court has no hesitation in holding that the court below has not committed any error of law or has passed the order contrary to the evidence which have come on record.
12. The appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-  
(P. Sam Koshy)  
**Judge**