

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQUITTAL APPEAL NO. 92 OF 2015

State of Chhattisgarh, through District Magistrate, Rajnandgaon (C.G.)

... Appellant

Versus

Surendra Kshatriya, S/o Rashit Kshatriya, aged about 21 years, R/o Village Padampur (Baramuda), Post- Sachergaon, P.S. Keygaon, District Kalahandi (Odissa)

... Respondent

For Appellant	:	Mr. Anupam Dubey, Dy. Govt. Advocate.
For Respondent	:	Mr. Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/07/2016

1. The present acquittal appeal has been filed challenging the judgment of acquittal dated 22.1.2015 passed by the Special Judge (N.D.P.S.), Rajnandgaon in Special Criminal Case No. 11 of 2014. Vide impugned judgment dated 22.1.2015, the Court below has in a proceeding under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'N.D.P.S. Act') has passed an order acquitting the Respondent-accused from the said offence.

2. The case of the prosecution in brief is that a secret information was received by the G.R.P. Rajnandgaon that some persons were carrying *Ganja* in Train No. 12807, Samta Express, which was going towards Nagapur. Acting upon the said information, the G.R.P., Rajnandgaon conducted a search in the unreserved general compartment of the said Train on 5.6.2014 and in the course of search they found a bag containing 4kg *Ganja* underneath the seat and later on they implicated the

Respondent-accused for the offence under Section 20(B)(ii)(b) of the N.D.P.S. Act and the matter was put to trial.

3. The Court below finally vide its judgment dated 22.1.2015 found that the prosecution has failed to establish mandatory requirement of the provisions of the N.D.P.S. Act like Sections 55 and 57 and in addition the Court below also found that the prosecution also has not been able to establish the exclusive possession of the contraband from the possession of the Respondent-accused and thus passed the impugned judgment of acquittal in favour of the Respondent-accused.

4. Counsel for the Appellant submits that the Court below has not considered the evidence which has been lead by the prosecution more particularly the evidence of the Investigating Officer who has clearly deposed before the Court below specifying the compliance of the mandatory provisions of the N.D.P.S. Act. That the deposition of the Investigating Officer was not considered in its proper perspective by the Court below while acquitting the Respondent-accused from the said charge and therefore prayed for setting aside the impugned judgment and for convicting the Respondent for the offence under Section 20(B)(ii)(b) of the N.D.P.S. Act.

5. Per contra, Counsel for the Respondent-accused submits that it is a case where the prosecution has miserably failed to show the statutory compliance and which are mandatory in nature while initiating the prosecution under the provisions of the N.D.P.S Act. He further submits that at the first instance the prosecution has failed to establish and prove beyond reasonable doubts that the sample sent for FSL was in fact the same material which was taken from the contraband allegedly seized from the possession of the Respondent. Referring to paragraph 31 of the

impugned judgment he submits that the Investigating Officer himself has clearly admitted the fact that the Panchnama so far as the sample seized was not prepared which gives rise to a great element of doubt that whether the sample sent for FSL was of the same bag which was allegedly seized from the possession of the Respondent. This by itself evidently shows that there is a non-compliance of the provisions of the Section 55 of the N.D.P.S. Act. Further, it is also reflected from the deposition of the Investigating Officer that in the daily diary report (sanha report) also the entry so far as the Constable sent to intimate the higher officials also has not been reflected which also gives rise to doubt so far as mandatory compliance of Section 57 is concerned. Lastly, Counsel for the Respondent also took the Court through the evidence wherein it is said that the place of incident is the general compartment of Santa Express Train which was otherwise overcrowded and that the case of the prosecution itself is that the bag containing the contraband was kept underneath the seat of the train and that since the place was crowded it was difficult to reach to a conclusive proof of whether the bag in fact belonged to the Respondent -accused or not. It was also contended that the bag did not have any identification or for that matter any belonging of the Respondent on it by which also it could be inferred that it belonged to the Respondent. This also has weighed in the mind of the Court below while passing the impugned judgment of acquittal and therefore there is no scope of interference in the impugned judgment of acquittal.

6. Having considered the rival contentions put forth on behalf of either side and on perusal of the records it would clearly reflect that the prosecution has not been able to establish by leading cogent and conclusive proof of compliance of Section 55 as well Section 57 of the N.D.P.S. Act. Once if the prosecution has created a doubt so far as

contraband which was sent for FSL was whether from the same bag which was allegedly seized from the possession of the Respondent-accused or not, the entire case of the prosecution thereafter becomes doubtful. Similarly, even the statutory compliance of Section 57 of the N.D.P.S. Act has also not been duly proved by the prosecution inasmuch as the material so far as the police Constable sent for intimation to the higher authorities is missing from the daily diary report (sanha report). Likewise, the third factor also goes against the prosecution wherein they have failed to prove before the Court below leading a conclusive proof of the exclusive possession of the bag containing contraband from the Respondent as the place of incident was a crowded general compartment of the train and further the bag admittedly was found underneath the seat which was otherwise occupied by many passengers.

7. Thus, in the opinion of this Court, the Court below has not committed any illegality or infirmity while granting benefit of doubt to the Respondent in acquitting him from the offence under the provisions of the N.D.P.S. Act the provisions of which otherwise has to be strictly construed with.

8. Accordingly, the acquittal appeal being devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge