

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 95 of 2016**

State of Chhattisgarh Through - District Magistrate Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

Mohd. Aarif S/o Sheikh Dilawar Aged About 35 Years R/o Village Ramnagar Ward No. 5, Presently R/o Joginagar, Basantpur, Ward No. 40, Police Station Basantpur, Distt. Rajnandgaon Chhattisgarh.

---- Respondent

For Petitioner : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27/10/2016

1. The present acquittal appeal has been preferred by the State assailing the judgment dated 19.08.2015 passed by the Special Judge (NDPS Act), Rajnandgaon, in Special Criminal Case No.03/2014. Vide the said judgment, the respondent-accused was prosecuted for the offence under Section 20 (B) of the NDPS Act and after conclusion of trial, the court below has acquitted the respondent from the said charges.
2. Learned counsel appearing for the State assailing the judgment impugned submits that the court below has not properly appreciated the evidence which have come on record particularly the departmental witness who have been examined. According to the petitioner, under the provisions of NDPS Act, it was incumbent upon the court below to have relied on the evidence of the Investigating Officer Kashi Nath

Mandavi, PW-8. He submits that there are decisions of Supreme Court that in the event of independent witness not supporting the case of the prosecution, the court can rely upon the statement of the Investigating Officer as well as the other departmental witnesses and relying upon the said evidence the court can convict the accused persons. He further submits that even otherwise, the deposition of Kashi Nath Mandavi, PW-8, the Investigating Officer, categorically proves the case of the prosecution beyond all reasonable doubts. Deposition of PW-8 also reflects the statutory compliance at the time of search and seizure of the accused person and as such there was no ambiguity, omission or infirmity in the statement of the prosecution witness, PW-8 and which has wrongly been appreciated by the court below while acquitting the respondent-accused person. Therefore, he prays for acquittal to be set aside and the respondent-accused be convicted.

3. Having considered the contentions of the counsel for appellant and on perusal of record what clearly reflects is the fact that though PW-8, the Investigating Officer has deposed that so far as compliance of Section 42(2) of the NDPS Act is concerned, vide Ex. P/18, he has sent a memo to the superior officer, but the same could not be served on account of superior officer being out of station on some official work. Even if the said statement is accepted to be proper, the fact still remains that the said information could not be passed upon the superior officer which the Investigating Officer could have done by some other means or to some other senior officers in case if the concerned officer

was out of station. Further, from the deposition of Investigating Officer what also is reflected is that there is no evidence brought on record by the prosecution to establish that the alleged house from where the contraband was seized belonging to the present respondent. In addition, in the deposition of the evidence of prosecution it is also reflected that the motorcycle from which the contraband was seized was not owned by the respondent-accused, but belonged to one Abdul Rafique. Abdul Rafique, PW-5, has categorically submitted that the motorcycle infact was given to the brother of the present accused and not the accused. Thus, there is great element of doubt with regard to vehicle being provided by its owner to the present accused secondly there is doubt in the story of the prosecution in determining whether the place/house where the contraband was seized belonged to the respondent-accused.

4. This view of the court stands fortified from the deposition of the Investigating Officer, PW-8, wherein he has admitted the fact that he has not obtained any revenue records or proof of revenue details to establish that the house from where the contraband was seized belonged to the respondent-accused.
5. These are sufficient materials by which the story of the prosecution creates great element of doubt. Further, in addition to the aforesaid doubts that have been crept in the prosecution story, there is no independent witness who have supported the case of the prosecution. In addition, there are some serious omissions and contradictions in the

statement of PW-6 when compared to the statements of PW-1 & PW-2, benefit of which shall also go in favour of the respondent-accused.

6. For the aforesaid reasons, this court is of the opinion that no strong case has been made out by the State calling for an interference with the order of acquittal. The Supreme Court on more than couple of decisions has categorically held that the order of acquittal should not be interfered lightly. It can only be interfered when the court below, despite cogent and strong proof brought on record by the prosecution, has not appreciated or considered the same. In the present acquittal appeal, the State has not been able to show any such perversity or any infirmity on the part of the court below while reaching to the conclusion that the prosecution has failed to prove its case beyond all reasonable doubts.
7. Accordingly, the acquittal appeal fails. The same deserves to be and is hereby dismissed.

Sd/-

(P.Sam Koshy)

Judge