

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.87 of 2015**

The State of Chhattisgarh through District Magistrate, Rajnandgaon (Chhattisgarh).

---- Appellant

Versus

Prakash Kshtriya, S/o Rashit Kshtriya, Aged about 22 years, R/o village Padampur (Baramuda), Post Sachergaon Police Station-Kegaon, District Kalahandi (Odissa).

---- Respondent

For Appellant

Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

29/11/2016

1. The State by this acquittal appeal challenges the judgment dated 22.01.2015 passed in Special Criminal Case No.12 of 2014 whereby the respondent has been acquitted from the charges under Section 20(B)(II)(b) of the Narcotics Drugs and Psychotropic Substance Act, 1985 (in short, NDPS Act).
2. Facts in brief relevant for adjudication of the case are that, the Assistant Sub Inspector of GRP, Dongargarh received a secret information that on 05.06.2014 in Train No.12807 UP-Samta Express, in the General Coach (Back side) of the Train, two persons aged about 20-25 years are carrying illegal contraband-Ganja. On the basis of the said secret information, GRP, Dongargarh, constituted a team for search of the said Train and after necessary compliance of

provisions of NDPS Act, when the Train reached at Dongargarh Station at Platform No.1, the team of police personnel searched the General Coach and they found the accused persons who were suspected carrying contraband substances. In the course of search it was found that the respondents sitting in the General Coach had bags beneath their seats and on query they admitted the bags to be of theirs. In the presence of witnesses those bags were searched and found containing 4 kg of Ganja. An FIR was lodged and the respondent was charged for the offence under Section 20-B(ii)(b) of the NDPS Act. After completion of investigation, the matter was put to trial before the Special Court (NDPS) where the case has been registered as Special Criminal Case No.12 of 2014.

3. The prosecution in all examined 11 witnesses, whereas the accused did not lead any defence witness. The trial court finally vide judgment impugned granted benefit of doubt to the accused person and acquitted him 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 of acquittal, 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 court below has not properly appreciated the evidence which have been adduced on behalf of the prosecution and on very hyper technical grounds has granted acquittal of the respondent. Referring

to statement of Investigating Officer and other witnesses, it is submitted that the evidence which have been led by the witnesses and other departmental witnesses it sufficiently proves the commission of crime and the matter stands proved beyond reasonable doubts. Therefore, grant of acquittal to the respondent is bad in law and deserves to be set aside. He further submits that deposition of departmental witnesses also would reflect that they had ensured the mandatory statutory compliance as is required under the provisions of NDPS Act.

5. Counsel for the State particularly referring to statement of PW-9, the Investigating Officer, as also the statement of PW-7, emphasized the fact to show as to how the prosecution has proved its case.
6. However, having considered the submissions put forth by the counsel for the State and on perusal of the records, what clearly reflects is the fact that PW-7, Ashok Mandpe, Head constable, working as Moharir of GRP, Dongargarh, in his evidence has accepted the fact that there was no proper document to show that the entries were made in respect of the storing of the contraband seized from the respondent and also showing taking of the contraband for chemical examination during the course of evidence. In the light of the said entries not being produced during the course of evidence nor is it reflected in the evidence of the prosecution witnesses, the fact that the contraband seized from the possession of the respondent were kept in a safe custody creates doubt and the court below taking this view has granted benefit of doubt to the respondent.

7. Likewise, it was also the finding of the court below that so far as the custody of the contraband between 07.06.2014 to 09.06.2014 is not reflected as to whether it was safely kept and under whose custody it was kept during the said period. These creates great element of doubt on the prosecution story. Similarly, the court below further during the course of evidence found that the Investigating Officer, PW-9, Laxman Singh Thakur, also in his cross examination has accepted the fact that while the samples were being collected, no Panchnama was prepared. Neither was any specimen seal on the draft which was prepared for sending the contraband for chemical examination to FSL Raipur. Thus, the court below in the given facts and circumstances of the case, reached to the conclusion that it is not clearly established whether the samples which were collected and sent for examination were the same samples collected from the contraband which was allegedly seized from the possession of the respondent. For the said reason, the court below held that the requirement of law as is required under Section 54 of NDPS Act is not fulfilled by the prosecution during the course of evidence.
8. Similarly, it is also reflected that after receipt of the secret information, when the team had conducted search of General Coach of said Train, it was found that the respondent accused was sitting in the coach along with large number of other passengers. It was also found that the bag in which the alleged contraband was found was placed beneath the seat where the respondent accused was sitting there were other lot of bags of other commuters also kept. Thus, from the

said facts and circumstances of the case it is difficult to establish that the prosecution has been able to clearly establish the exclusive possession of the said contraband from the respondent accused. In the absence of any specific identification of the bag and the contraband or any other material in the bag to show it belonged to the respondent, the entire case of the prosecution smacks doubt and cannot be said to have been proved beyond reasonable doubt and the benefit of which also would go in favour of the respondent accused.

9. Further, in the course of investigation, the court below also found that mandatory requirement of Section 57 of the NDPS Act has not been fulfilled or established by the prosecution inasmuch as, the admitted facts from the statement of PW-8, Assistant Sub Inspector, reflects that the document so far as an intimation about the seizure, arrest and safe custody of the contraband was not found to have been made to the immediate superior officers.
10. In view of non compliance of the aforementioned statutory and mandatory requirement of Sections 54 and 57 of the NDPS Act, it can be safely held that the prosecution has not been able to establish the case against the respondent beyond reasonable doubts. Even otherwise, even for the slightest of deficiency or lacuna, the benefit of which would go to the respondent 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 54 and 57 of the NDPS Act. This court has no hesitation to hold that the case of the prosecution has not been proved beyond reasonable doubt.

- 11.** All these facts go in favour of the respondent accused. Thus, in the given facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that the court below has not committed any illegality or infirmity while reaching to the conclusion of acquittal of the respondent accused from the commission of offence under Section 20-B (ii)(b) of the NDPS Act.
- 12.** The appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder