

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 672 OF 2016

State of Chhattisgarh, through Station House Officer, Police Station-
Chilhathi, District- Rajnandgaon (C.G.)

... Petitioner

Versus

1. Ajay Kumar Vaishnav, S/o Ghanshyam Vaishnav, aged about 33 years, R/o Village Bisahutoal, Police Station Chichola, District Rajnandgaon (C.G)
2. Rupendra Singh Kanwar, S/o Girvar Ram Kanwar, age 48 years, R/o Village Nagarkohra, Police Station Chichola, District Rajnadgaon (C.G.)

... Respondents

For Petitioner-State : Mr. O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/11/2016

1. Heard on I.A. No.1 of 2016, seeking condonation of delay in filing of the present petition which is barred by limitation of 5 days.
2. Since sufficient cause has been explained in the I.A. No.1 for the delay occurred in the filing of the present petition, the same is allowed and the delay of 5 days caused in the filing of the petition is condoned.
3. Also heard on admission.
4. The present petition has been filed by the State seeking leave to appeal against the judgment of acquittal dated 18.2.2016 passed by the Special Judge (N.D.P.S. Act), Rajnandgaon in Special Case No. 16 of 2014, whereby the respondents-accused have been acquitted of the charge under Section 20(B)(ii)(b) of the N.D.P.S. Act.
5. Brief case of the prosecution is that the respondent-accused on 5.9.2014 were travelling on their motorcycle (Bajaj Boxer) bearing Registration No. CG08-E/2289. Meanwhile, on a secret information, the

police authorities of Police Station Chilhati, Rajnandgaon reached the spot and caught the respondent-accused and during the search it is alleged that they were found to be carrying 10kilogram of Ganja in a jute bag. Later on, a charge-sheet was filed against the respondents-accused for the offence under Section 20(B)(ii)(b) of the N.D.P.S. Act and the matter was put to trial before the Special Judge (N.D.P.S. Act), Rajnandgaon where the case was registered as Special Case No. 16 of 2014.

6. During the course of trial, the prosecution examined as many as 6 witnesses. The defence did not examine any witnesses. After the conclusion of the trial, the Court below vide impugned judgment found the prosecution case to be highly doubtful on account of a large number of discrepancies in the documents which were exhibited during the course of trial, and acquitted the respondents-accused of the charge under Section 20(B)(ii)(b) of the N.D.P.S. Act, leading to the filing of the present petition under Section 378(3) of CrPC.

7. Shri O.P. Sahu, Counsel for the State, seeking leave to appeal submitted that the Court below in a mechanical manner passed the impugned judgment acquitting the respondents-accused. He further submitted that the prosecution has in fact been able to establish the case beyond all reasonable doubts. He next submitted that the Court below should have considered the gravity of offence and should not have decided the case on hyper-technical grounds and relying upon the statement of the Investigating Officer it should have convicted the respondents-accused. According to the State Counsel it is a case where the respondents-accused were caught red-handed carrying 10kilogram of Ganja on a motorcycle and both the accused persons were travelling together on the said motorcycle at the time of incident when they were caught by the police authorities on receipt of the secret information. Thus, he prayed for

granting leave to appeal as there are strong chances of the judgment of acquittal to be interfered with.

8. However, from perusal of the record what clearly reflects from the impugned judgment of acquittal is that the Court below in the course of considering the documents found that in the Exhibit P-4 which is the consent letter for search conducted by the investigation team, the time shown as 20:50 i.e. 8:50pm; whereas in the seizure memo (Exhibit P-5) the time shown is 20:40 i.e. 8:40 pm. This by itself creates a doubt on the prosecution story as the seizure appears to have been made earlier and the consent letter for search to have been prepared subsequently which is directly in conflict with Section 50 of the N.D.P.S. Act. Likewise, from the statement of PW-5, Ramu Gurde, the Investigating Officer, it is also reflected that the weighment panchnama (Exhibit P-7) was carried out at 20:10 i.e. 8:10 pm whereas the seizure memo (Exhibit P-5) shows the time of 20:40 i.e. 8:40pm. This again clearly reflects that the weighment panchnama was prepared before the seizure itself was made. Similarly, the weighment witness, PW-6 Siraj Ali also during the course of deposition has stated that he had not carried 100gram and 200gram weight along with him and in the absence of 100gram and 200gram weight the sample measuring exactly 100gram could not have been removed from the consignment seized from the respondent-accused, which further creates doubt in the mind of the Court.

9. To add with the aforesaid discrepancies it is also a case where the independent witnesses have not supported the case of the prosecution and the entire case of the prosecution rests upon the departmental witnesses and the documents produced by the department show huge discrepancies so far as the timings of the various mandatory documents

and procedures to be followed by the prosecution in the case under the N.D.P.S. Act.

10. In view of the aforesaid discrepancies detected during the course of trial, this Court does not find any illegality or infirmity committed by the Court below in acquitting the respondents-accused by granting them benefit of doubt. Thus, no strong case has been made by the State for interference with the impugned judgment of acquittal.

11. The Criminal Misc. Petition is accordingly dismissed. Consequently, the prayer for leave to appeal also stands rejected. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

/sharad/