

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 458 of 2017

- State of Chhattisgarh through: Police Station Sankara,
District Mahasamund, Chhattisgarh. --- **Appellant**

Versus

- Jumman Khan @ Mustak S/o Late Abdul Habib, Aged About
36 Years R/o Ward No. 13, Husainganj, Maudaha Police
Station Maudaha, District - Hamirpur, Uttarpradesh.
--- **Respondent**

For the applicant : Mr. Sangharsh Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

07.07.2017

Heard.

1. Leave to appeal has been preferred against the acquittal order dated 29.12.2016 passed by the Court of special Judge (constituted under NDPS Act), Mahasamund in Special Case No.H-33/2015.
2. As per the prosecution case, on 14.09.2015, certain information was received that accused is carrying cannabis. On having intercepted, from his possession, six packets of cannabis were recovered. Thereafter the seized 6 packets of ganja was identified and weighed and 100 grams were taken out separately which was marked as sample 'A-1' and the same was sealed and sent to FSL. It is stated that before the seizure, all the formalities as required u/ss 42 and 50 of the Narcotic Drugs and Psychotropic Substances Act were complied. The trial Court acquitted the accused on the ground that the the sample which was taken out from

Cannabis has not been proved to be taken from the same packets which was seized and sent for FSL. Consequently the presumption cannot be drawn that the entire seized material was cannabis as the seizure of samples was marked as 'A-1' whereas the packet 'A' was sent for FSL which is different. As such the prosecution has failed to prove that the samples which was sent for examination was taken from the original seized packets.

3. Learned State Counsel would submit that the trial Court has erred in arriving at a finding that the cannabis samples so sent to FSL were not seized from the entire seizure of six kgs., as the seal was the same which is not disputed, therefore, the finding of the trial Court is completely illegal and deserves to be set aside, therefore, leave to appeal is liable to be granted and the case may be registered as acquittal appeal.
4. Perused the documents. The seizure witnesses have not supported the case of prosecution. The statements of P.W.9 Haricharan Pradhan and P.W.10 Teerthraj Gunendra would show that when the seizure was made it was found to be 6 Kgs., and out of that a sample of 100 grams were taken out which was marked as 'A-1'. P.W.9 is an independent witness who has stated that the sealed packet was marked as A-1. The investigating officer who is P.W.10 has also corroborated the fact at Paras 7 and 23 of his statement wherein it is stated that the seizure was made and samples so collected from the seized Ganjal was marked as 'A-1'. Ex.P-29 which is the weighment of sample shows that out of total quantity of cannabis, 100 grams were taken out and the samples were prepared which was marked as 'A-1' and it was sealed. The

document would show that the seizure was made on 14.09.2015 and Ex.P-27 shows that the cannabis was kept in separate 6 packets and the weighment Panchnama Ex.P-17 shows that the seized ganja was weighed as 6 kgs. Further after seizure when the said cannabis was deposited in Malkhana , it shows that the entire six kgs., of cannabis were deposited. The copy of the Malkhana register is marked as Ex.P-2(C). Therefore, the Malkhana register would show that no separate samples were deposited and the entire six kgs., was deposited.

5. The FSL deposit receipt of the sample which is placed on record as Annexure P-14 shows that on 15.05.2015 through one Mohit Ram only one packet which was marked as A was deposited with the FSL whereas the sealed Panchnama Ex.P-28 shows that sample of 100 grams was marked as 'A-1' and not 'A'. Likewise, if the samples of 100 grams were taken out from the seized material of 6 kgs., the Malkhana register shows that the entire 6 Kgs., of ganja was deposited. Therefore, FSL report creates a doubt as to which sample was sent for chemical examination. Simply for the fact that it bears the seal of police station will not lead to inference that 'A-1' was the sample which was prepared was sent for FSL when the documents shows otherwise. Nothing is on record to show that whether the six packets which were separate were mixed up, but it shows that the entire quantity of 6 Kgs., were deposited. Consequently the doubt which has been created by the prosecution remained unexplained as the FSL report Ex.P-37 forms the presence of cannabis on the sample of A, not A-1 which was actually kept and separated and the further deposit of entire 6 kgs., in *Malkhana* also

creates a doubt whether such samples were actually taken out or not. In such circumstances, the finding arrived at by the learned court below cannot be said to be illegal or perverse and no case appears to exist to allow the application for leave to appeal.

6. Accordingly, this petition is dismissed at the admission stage.

**Sd/-
GOUTAM BHADURI
JUDGE**

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