

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1197 OF 2016

State of Chhattisgarh, through Station House Officer, Police Station Pharsabahal, District Jashpur (C.G.)

... Petitioner

Versus

1. Kishore Paikra @ Ishwar Paikra @ Chimu, S/o Ramkumar Paikra, aged about 25 years, R/o Village Bhagora, P.S. Pharsabahal, District Jashpur (C.G.)
2. Ramkumar Chouhan, S/o Pujari Ram, age 30 years, R/o Village Bhagora, Kariya Munda, P.S. Pharsabahal, District Jashpur (C.G.)

... Respondents

For Petitioner-State : Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/02/2017

1. Heard on I.A. No.1 of 2017, which is an application for condonation of delay in filing the present case.
2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.1 of 2017 is allowed and the delay of 37 occurred in the filing the present case stands condoned.
3. Heard on admission.
4. The present petition has been filed by the Petitioner-State seeking leave to appeal against the judgment dated 12.4.2016 passed by the Special Judge (N.D.P.S. Act), Jashpur, in Special Criminal Case No. 14 of 2015.
5. By the impugned order dated 12.4.2016, in a proceeding under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the N.D.P.S. Act' in short) initiated against the Respondents, the Court below found that the prosecution has not been able to prove its case beyond reasonable doubt as there were non-compliance of the various mandatory statutory provisions of the N.D.P.S. Act and on account of which the Respondents have been granted benefit of doubt and have been acquitted of the charge under Section 20(B)(ii)(b) of the N.D.P.S. Act.

6. Learned Counsel for the Petitioner-State submitted that the Court below has not appreciated the fact, that the law insofar as the N.D.P.S. Act is concerned is by now well settled that the case of the prosecution can also be established without independent witnesses supporting its case. According to the State Counsel, in case the independent witnesses have turned hostile yet the Court below can look into the evidence of the departmental witnesses particularly, the deposition of the Investigating Officer, and could reach to a conclusion of conviction. He further submits that from the evidence of the prosecution which have come on record it clearly suggests that there have been ample evidence which have been brought on record by the departmental witnesses which prove the case of the prosecution beyond doubt. He further submits that even the independent witnesses though have been turned hostile but they have accepted their signatures to be put on the respective memos i.e., seizure memo and weighment panchnama etc., which were executed in their presence. According to him, the execution of the documents has to be accepted to have been proved, which also has not been properly appreciated by the Court below. Thus, the impugned judgment deserves to be challenged in an appeal, for which leave has been sought.

7. Having considered the contentions put forth by the Counsel for the State and on perusal of the record, the undisputed facts in the instant case are, that the police authorities received a secret information on 31.10.2015 in respect of the Respondents carrying contraband (Ganja) with them on a motorcycle. On the said information, the police authorities intercepted the motorcycle of the Respondents and during the course of the search they were found in possession of 2kg and 300gram of Ganja. After completion of the requirement under the law, the charge-sheet was filed in the Court and the matter was put to trial before the Special Judge (N.D.P.S. Act), Jashpur, where the case was registered as Special Criminal Case No. 14 of 2015. During the course of

evidence, the prosecution examined as many as 8 witnesses. After conclusion of the trial, the Court below reached to the conclusion that since there were material non-compliance of the mandatory provisions under the N.D.P.S. Act the case of the prosecution does not stand to have been established beyond reasonable doubt and therefore the Court below acquitted the Respondents of the charge under Section 20(B)(ii)(b) of the N.D.P.S. Act, leading to the filing of the present case.

8. A perusal of the record shows that the independent witnesses, PW-1 Sukhsai and PW-3 Tyyeb Alam, have not supported the case of the prosecution in respect of the seizure and weighment panchnamas which were prepared. In the absence of any independent evidence, the responsibility of the prosecution becomes greater for proving the case against the Respondents. Further, from the record it reflects that the Court below at the first instance found that the compliance as is required under Section 42 of the N.D.P.S. Act not complied. There was no proof of sending the secret information to the higher authorities of the department, which is mandatory requirement under Section 42 of the N.D.P.S. Act. In addition, it also reflects that the mandatory requirement under Section 50 of the N.D.P.S. Act has also not been carried out in its proper perspective, inasmuch as the search and seizure which have been conducted at the house of the Respondents and also of the place of incident, have been jointly entered in a panchnama, whereas each of the search should have been prepared by way of separate panchanamas. Thus, there is clear a violation of the provisions contained in Section 50 of the N.D.P.S. Act. Likewise, it was also the finding of the Court below that from the evidence of PW-6 Shyam Lal Dwivedi, Head Constable, the contraband which was seized from the possession of the Respondents was not properly sealed keeping it in the Malkhana, whereas the witness has accepted that the contraband was simply tied in a bag with a knot and placed

in the Malkhana without any sort of seal on it, which also creates a great element of doubt on the prosecution story. Likewise, the finding of the Court below was also that there is also a clear violation of Section 55 of the N.D.P.S. Act, inasmuch as the samples which were taken out from the Malkhana to be sent to Forensic Science Laboratory, were released on 4.11.2015, however, the same was made available at the Forensic Science Laboratory only on 6.11.2015. There was no evidence in respect of where this contraband was and with whom it was during this period. The possibility of the samples being tampered with as they were not properly sealed and stamped cannot be ruled out. Thus, there was a clear violation of the provisions of Section 55 of the N.D.P.S. Act also. Further, from the evidence it also reflects that during the course of investigation, the Investigating team has not disclosed as to the nature of the contraband which was seized; whether it was in the form of flower or flowery seeds or seeds or was in a dry or in a wet condition or what was the colour of the contraband. All these give a great element of doubt on the prosecution story.

9. In the light of the aforesaid discrepancies which have been reflected during the course of trial by the Court below, this Court is of the opinion that it cannot be said that the Court below has not appreciated the evidence which have come on record, neither can it be said that the Court below has not taken a plausible view. Thus, in the opinion of this Court, no strong case has been made out by the prosecution calling for interference with the impugned judgment of acquittal of the Respondents.

10. Thus, for the foregoing reasons, the present Criminal Misc. Petition being totally devoid of merits the same is dismissed. Consequently, the prayer for leave to appeal also stands rejected. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge