

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1306 OF 2016

State of Chhattisgarh, through the District Magistrate, District Jashpur (C.G.)

... Petitioner

Versus

Shekhar Yadav, S/o Kalindar Yadav, Caste Mahkul, aged about 21 years, R/o Gariyadohar, Chowki- Doukda, Police Station Kansabel, District Jashpur (C.G.)

... Respondent

For Petitioner-State

:

Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2017

1. The present Criminal Misc. Petition has been preferred by the Petitioner-State seeking leave to appeal under Section 378(3) of CrPC against the judgment dated 14.6.2016 passed by the Special Judge (N.D.P.S. Act), Jashpur, in Special Criminal Case No. 12 of 2015, whereby the Respondent has been acquitted from the offence under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 146/196, 3/181, 39/192 of the Motor Vehicles Act, 1988.
2. Learned Counsel for the Petitioner-State submits that the Court below has not properly appreciated the evidence which have been led by the prosecution to establish its case. According to him, it is a settled position of law by now, that even if the independent witnesses have not supported the case of the prosecution in a case under the N.D.P.S. Act, the Court can still look into the evidence which have been led by the other departmental witnesses particularly, the Investigating Officer, and can hold the charges to be proved and can also convict the accused person. According to the State Counsel, in the instant case, one of the grounds of granting acquittal to the respondent-accused was that, the case of the prosecution has not been

supported by any of the independent witnesses and therefore the benefit has been given to the respondent-accused by the Court below. It is also the case of the prosecution that, it cannot be said that the independent witnesses have not supported the case of the prosecution, for the reason that in the cross-examination the independent witnesses examined have accepted their signatures to be put on the seizure panchnama as well as on the recovery panchnama and therefore this aspect should have been considered by the Court below and should have held that the charges have been proved beyond reasonable doubt by the prosecution. The State Counsel thus prayed for grant of leave to appeal against the judgment of acquittal.

3. However, a perusal of the record as also from the impugned judgment of acquittal what is reflected is that, the acquittal is not just on the ground that the case of the prosecution has not been established by any of the independent witnesses. Perusal of the record shows that, the first ground which has been taken by the Court below for acquitting the respondent-accused was, the seizure and the recovery not been proved sufficiently before the Court below. The witnesses to the seizure as well as the recovery, have all turned hostile, but after declaring them hostile also the prosecution has not been able to extract much from these prosecution witnesses, namely, PW-1 Ramjeevan Das and PW-2 Biksal Toppo. Another factor which has been taken into consideration by the Court below for the purpose of grant of acquittal is, doubting the recovery on the part of the prosecution. The finding of the Court below on the basis of Exhibit P-10 and the depositions of PW-1 Ramjeevan Das and PW-2 Biksal Toppo, is that the prosecution has not been able to establish the fact that the contraband which was seized from the possession of the respondent-accused was in what form or colour, like; whether the contraband seized was green in colour, whether it was dry or whether it was leafy in nature or whether it was in the form of seeds or flower. There is no

entry in this regard available in the recovery panchnama, which itself gives rise to a great element of doubt.

4. Likewise, it was also the finding of the Court below that the witness of the weighment has also not supported the case of the prosecution, inasmuch as the weighment witness PW-3 Anand Sao, has also turned hostile and nothing has been extracted from his cross-examination to support the case of the prosecution. It was also the finding of the Court below that the samples have not been properly taken; neither were they sealed immediately nor were the same kept in a safe custody, doubting on the case of the prosecution as to whether it were the same samples which were collected and were sent to Forensic Science Laboratory. According to the prosecution witnesses itself, as is reflected from paragraph 19 of the impugned judgment, the seizure proceeding was initiated at 13:15, i.e., 1:15 pm, on the afternoon of 26.8.2015, whereas the sample collection was done at around 14:00, i.e., 2:00 pm. Before the weighment panchnama was recorded, it was not properly identified neither was it mixed properly or if at all it had been done, no such entry has been reflected from the case diary or from the evidence which have been brought on record.

5. Further, from the proceeding it also appears that there was also violation of the statutory requirement, as is required under Section 55 of the N.D.P.S. Act, inasmuch as whether the samples which were collected from the contraband seized were safely kept in custody at the Malkhana or not. According to the evidence which have come on record, though the samples were collected on 26.8.2015 itself, but till 3.9.2015 the keeping of the said samples at the Malkhana is doubted, which creates a doubt as to whether the samples were kept from the date it were collected till 3.9.2015 when it had reached the Forensic Science Laboratory at Ambikapur.

6. If we look into all the aforesaid considerations which have been taken note of by the Court below while acquitting the respondent-accused, it cannot be said that the view which has been taken by the Court below was erroneous or contrary to the law. It also cannot be said that view taken was not a plausible opinion which could be formed. No strong case has been called in for interfering with the judgment of acquittal by the prosecution in the present case.

7. The present Criminal Misc. Petition thus being devoid of merits, the same is accordingly dismissed. Consequently, the prayer for grant of leave to appeal also stands rejected. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge