

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.55 OF 2017

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SAGAR DATTARAM MAHADIK AND ORS.)...RESPONDENTS

Mr.P.J.Jadhav, APP for the Applicant – State.

Mr.C.K.Pendse a/w. Mr.Kamlesh Modi, Advocate for Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 13th DECEMBER 2017

P.C. :

1 This is an application for leave to appeal by the State in order to assail acquittal of respondent/accused in Special Case No.23 of 2014 for offences punishable under Sections 8(c) read with 21(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act for the sake of brevity).

2 Heard the learned APP appearing for the State. He argued that evidence of the prosecution witnesses points out

compliance of Section 50 as well as Section 42 of the NDPS Act and therefore, the learned trial court erred in acquitting the respondent/accused of alleged offences.

3 The learned advocate appearing for respondents drew my attention to evidence of PW3 Bajirao Bandu Patil, Police Inspector, PW9 Dr.Deepali Pramod Kale, Sub-Divisional Police Officer, as well as PW2 Seema Chalke – a panch witness, and argued that evidence of prosecution is discrepant and it is reflecting glaring non-compliance of mandatory provisions of Sections 42 and 50 of NDPS Act.

4 I have carefully considered the rival submissions and also perused the record made available. It is case of the prosecution that on the basis of secret information received by police, a trap was arranged and accused persons were found in possession of 3.980 kgs. ketamine powder which is a narcotic drug and was amounting to commercial quantity.

5 It is seen from the record that in order to bring home the guilt to the respondent/accused, the prosecution has examined in all ten witnesses. Evidence on record shows that though secret information was received and it was forwarded to PW9 Dr.Deepali Kale, Sub-Divisional Police Officer, she herself has joined the raid as the Investigating Officer and she has not transmitted the information so received to her immediate superior officer i.e. the Superintendent of Police, Ratnagiri.

6 According to the prosecution case, the narcotic drug was found on person of respondent/accused no.1 Sagar Mahadik. PW2 Seema Chalke is an independent panch witness, whose services were availed by the prosecution for effecting search and seizure. In her cross-examination, this panch witness has stated thus :

“The police took the search of the said car by opening the dickey. Two bags found in the dickey of that car. Those bags means the bags in which the alleged ketamine was found.”

7 As against this, rest of the witnesses are stating that the narcotic drug was found on person of respondent/accused no.1 Sagar Mahadik. It was seized by effecting his personal search.

8 So far as compliance of Section 50 of NDPS Act is concerned, the Investigating Officer PW9 Dr.Deepali Kale, Sub-Divisional Police Officer, has spoken in the following words :

“We disclosed to them we are gazetted officers and obtained their consent for taking their personal search. During said search we found two transparent plastic bags containing white colour powder in it in possession of Sagar Mahadik.”

9 It is obvious that the information received by the Investigator PW9 Dr.Deepali Kale, Sub-Divisional Police Officer, was not transmitted to her immediate superior officer. In the wake of this fact, this witness has categorically accepted the fact that she carried out the investigation and her name is shown as

Investigating Officer in papers of investigation. It is also obvious that there is non-compliance of Section 50 of the NDPS Act. The Police Officer, who was already a Gazetted Officer, was the member of the raiding team and she i.e. PW9 Dr. Deepali Kale, Sub-Divisional Police Officer, has informed the respondent/accused that she herself is a Gazetted Officer, and with such introduction, had obtained the consent of the accused persons for personal search.

10 In the wake of this factual position reflecting from the evidence of witnesses, I see no infirmity in the judgment and order of the learned trial court in acquitting the accused persons of alleged offences. In this view of the matter, the following order :

ORDER

The application for leave to appeal is rejected.

(A. M. BADAR, J.)