

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 54 of 2009**

State of Chhattisgarh, through S.H.O., P.S. Nagarnar, District- Bastar
(C.G.)

---- Appellant

Versus

Sukal, W/o Mithu, aged about 29 years, R/o Panarapara, Jagdalpur,
P.S. Jagdalpur, District- Bastar (C.G.)

---- Respondents

For State/ Appellant : Ms. K. Tripti Rao, Panel Lawyer.

For Respondent : Mr. Vikash Shrivastava, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

20/09/2018

1. This appeal is preferred under Section 378(3) of the Code of Criminal Procedure, 1973 against judgment dated 14.03.2007 passed by Special Judge, NDPS Act, Bastar at Jagdalpur (C.G.) in Special Case No. 34/2006, wherein the said court acquitted the respondent for commission of offence under Section 20(B) II(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 for having possession of contraband article ganja measuring 5.350 Kg. on 07.10.2006 at about 1.10 a.m. near Dhanpunji Mandi Naka, Jagdapur (C.G.).
2. In the present case, the respondent is a female namely Sukal, W/o Mithu, caste-Bhatra, aged 29 years, resident of Panarapara, Jagdalpur. To substantiate the charge, the prosecution examined as many as 5 witnesses. From evidence of investigating officer Sub-Inspector M. Yakub Menon (PW-5), search was made by one constable Godowari. Said Godawari is listed in witnesses of prosecution as per charge-sheet, but she has not examined

before the trial court. Sub-Inspector M. Yakub Menon (PW-5) deposed that after search, the contraband article was found in possession of the respondent, but the material witness who searched the respondent namely Godawari, Constable is not examined by the prosecution before the trial court.

3. There is no document that Godawari, Constable has searched the respondent and signed on any search paper. As per Section 50(4) of NDPS Act, a female can be searched only by a female. When the respondent is female, the search should be proved by a female witness, who searched the respondent, but there is no evidence produced by the prosecution before the trial court which is serious lacuna on the part of the prosecution. In absence of evidence of the constable Godawari, it is not proved that she has searched the respondent and seized contraband article from possession of the respondent.
4. The trial court again evaluated the evidence regarding all the process and sending proceeding to higher authorities and came to conclusion that the proceeding is also under cloud and therefore, charge is not established.
5. After going through the entire record and looking to the evidence, this Court has no reason to substitute the finding recorded by the trial court.
6. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge