

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.294 of 2010**

State Of Chhattisgarh, Through SHO, P.S. Dongargaon, District
Rajnandgaon (CG)

---- Appellant

Versus

1. Smt.G.Laxmi @ G.Mani W/o Late Apparao, aged about 56 years
2. Nagesh Rao S/o Late Apparao, aged about 32 years

Both R/o ward No.13, Sewatapara, Dongargaon, Rajnandgaon,
P.S. & Tehsil, Dongargaon, District Rajnandgaon (CG)

---- Respondents

For Appellant/State	: Ms.Madhu Nisha Singh, Panel Lawyer
For respondents	: Mr. R.K. Pali, Advocate

DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment**Per Ram Prasanna Sharma, J****01/02/2018**

1. This acquittal appeal is directed against the judgment dated 14.6.2007 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Rajnandgaon in Special Case No.01/2006 wherein the said Court has acquitted the respondents from charges under Section 20b(ii) (C) of the Act in relation to illegal possession of contraband article ganja weighing 66.500 kg.

2. As per the prosecution case, on receipt of information by Crime Branch, Rajnandgaon on 28.10.2003, Asst. Sub Inspector of Police, C.S. Uike made certain Panchanama for search of the house of respondents without search warrant and when they

made a search, contraband article 'Ganja' weighing 66.500 kg was found in the house of respondent G. Laxmi @ G. Mani. Two samples of the seized articles were separated and sealed and rest of the article was separately sealed and same was handed over to the In-charge of Malkhana of Police Station, Dongargaon. The sealed samples were sent for chemical examination to Forensic Science Laboratory, where test of Ganja was found positive. The matter was investigated and after completion of investigation, charge sheet was filed against the respondents before the Special Court. The respondents did not plead guilty and trial was conducted. After examination of the prosecution witnesses, statements of the respondents under 313 of the CrPC were recorded. After hearing counsel for both the parties, the Special Court acquitted the respondents of the charges mentioned above.

3. Learned counsel for the State submits as under :

- (I) The witnesses examined by the prosecution clearly established possession of Ganja from the respondents, but their statements have wrongly been disbelieved by the trial Court;
- (ii) Minor contradictions and omissions have no effect to the case of the prosecution in its entirety, but the trial Court gave undue weightage to these omissions which is not sufficient to reject the prosecution case;
- (iii) When contraband article was seized from possession of the respondents, they were responsible for the same,

therefore, the judgment passed by the Special Court is contrary to law.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is in factual matrix and legal aspect of the matter which is not liable to be reversed invoking jurisdiction of appeal.

5. To substantiate the charge, prosecution has examined as many as 13 witnesses. Head Constable, Harinarayan Singh (PW1), Head Constable, Domar Sahu (PW2), Constable, Raghvendra Singh (PW5), Constable, Farence Hanstha (PW6), Head Constable, Habibulla Khan (PW8), Uday Singh (PW9), Ajay Singh (PW10) and Assistant Sub Inspector, C.S. Uike (PW13) are the witnesses of seizure. As per these witnesses, Ganja was seized from the house of respondent – G. Laxmi @ G. Mani by the Police and samples from the seized article were prepared and were sent for chemical examination and the test of Ganja was found positive.

6. The core issue for our consideration is whether the house, in which Ganja was kept, was in exclusive possession of the respondents? The prosecution did not bother to produce evidence of 'record of right' showing possession of the said place. In our view, ownership of house is different from the possession of the same. In the present case, no record of right is produced before the trial Court regarding ownership or possession of the said premises.

7. Basant Kumar (PW4) and Sub Inspector, A.K. Netam (PW7) have deposed that one electricity bill was seized from the house of the respondent, marked as Ex.P/3, but that bill is not the document showing possession of the house because the department has issued the bill in the name of the person who had applied for Electricity connection.

8. For showing exclusive possession of the respondents, it has to be established that the premise was in their exclusive possession. If, document of possession was not available then the other course which was open for the prosecution was that to examine the neighbours, but the neighbours have not been examined to prove the possession of the respondents.

9. Head Constable, Harinarayan Singh (PW1) deposed in para 4 that one old lady was also present on the spot. Domar Sahu (PW2) deposed in para 5 that in the said premise daughter-in-law of respondent G. Laxmi @ G Mani and children were also present.

10. Constable, Farence Hanstha (PW6) deposed in para 5 that when they entered into the house of respondent G. Laxmi @ G Mani, her son, daughter-in-law, mother, younger brother and one person were present there.

11. Constable, Uday Singh (PW9) deposed in para 5 that six persons were found in the house. He further deposed that he is not aware of the fact as to who is owner or the possessor of the house.

12. No statement has been made by any of the Police authority that in spite of the efforts made by them, they could not produce record of right or record of possession or examine the neighbours to prove the possession relating to the premises in question. We find that there is no evidence on record to prove the respondents' exclusive ownership or possession of the premises and on the contrary, six more members were the possessor of the premises from where the contraband in question was found. When exclusive possession of the respondents on the said premises and conscious possession of Ganja is not established, the judgment of acquittal cannot be reversed.

13. Considering the facts and circumstances of the case and the evidence adduced by the prosecution, we are of the view that the finding arrived at by the trial Court is in fitness of factual matrix and legal aspects of the matter and it is not liable to be reversed or modified. Thus, the appeal fails and is accordingly dismissed.

Sd/

Sd/

Judge

Judge

(Prashant Kumar Mishra)

(Ram Prasanna Sharma)