

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.67 of 2009**

State of Chhattisgarh, Through the District Magistrate, District Koriya (CG)

---- Appellants

Versus

Smt. Shakuntala Yadav, W/o. Shri Jagdish yadav, Aged about 45 years, Occupation House wife, R/o. Chhappan Dafai, Khongapani, PS Jhagarakhand, Distt. Koriya (CG)

---- Respondent

For the appellant/State : Shri Ramakant Pandey, Panel Lawyer
For the respondent : None present.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****27.8.2018.**

1. This acquittal appeal has been preferred against judgment of acquittal dated 24.10.2008 passed by Sessions Judge/Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1995 (for short 'NDPS Act'), Koriya (Baikunthpur) in Special Case No.04/2008 wherein the said Court acquitted the respondent for commission of offence under Section 20b(ii)B of the NDPS Act.

2. As per the prosecution case, the respondent has been charged with above said offence for illegal possession of contraband article ganja measuring 5 kg 800 gms in her house at Chhappan Dafai, Khongapani on 08.02.2008.

3. Learned counsel for the appellant/State submits as under:

(i) From the evidence of the prosecution side it is established that the respondent was in possession of ganja measuring 5.8 Kg,

but the trial Court has not evaluated the evidence available on record.

(ii) Mandatory provisions of Sections 50, 55 & 57 of the NDPS Act have been fully complied with but the trial Court has overlooked the same and came to a wrong conclusion.

(iii) Finding of the trial Court is mis appreciation of the evidence on record and the same is liable to be reversed.

4. The core issue for consideration before this Court is whether the article seized was contraband article ganja (cannabis) as mentioned in the said Act. From the evidence adduced by the prosecution the said seized article was deposited in malkahna of the Poilce Station and as per the incharge of the malkhana Head Constable Ramdayal Bhagat (PW-5) seized article was deposited on 08.02.2008 and the same was withdrawn from the malkhana on 29.3.2008. As per the evidence of Shashikala Paikra (PW-10), Ghanshyam Singh Rathore (PW-4) and Vijay Sen Sharma (PW-9) seized article was deposited in Forensic Science Laboratory, Raipur on 12.02.2008. As per the certificate of the FSL, the articles were deposited on 13.02.2008.

5. The evidence of withdrawal of the seized article from the malkhana of the Police Station and evidence regarding depositing the same in FSL are divergent. As per the evidence of the incharge of the malkhana, seized article was withdrawn on 29.3.2008 while from other evidence, the article was deposited in FSL for examination on 13.02.2008. From these contradictory

evidence it was not established that the article which was seized in the present case was sent to FSL for examination.

6. The trial Court has assessed the entire evidence of the prosecution at length and opined that it is not proved that the article seized in the present case was actually sent for examination, therefore, report of the FSL cannot be used against the present respondent for convicting her. Finding of the trial Court is based on marshaling of the entire evidence and looking to the elaborate discussion on the evidence, this Court has no reason to interfere with the finding of the trial Court. As the seized article was not proved to be ganja, the respondent is not liable to be convicted.

7. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE