

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 185 of 2009**

The State of Chhattisgarh, Through- District Magistrate, Jagdalpur-Bastar (C.G.)

---- Appellant

Versus

Jageshwar Kumar Anurag, S/o Durgaprasad Anurag, Aged about- 35 years, Caste - Kalar, Occupation- Grocery Shop, R/o Village- Orang, Ward No. 08, Singpur Road, PS. Bisanda, District- Banda (U.P.)

---- Respondent

 For State/ Appellant : Mr. Lav Sharma, Panel Lawyer.
 For Respondent : Mr. P.K. Tulsyan, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

03/10/2018

1. This acquittal appeal is preferred under Section 378 (3) of the Code of Criminal Procedure, 1973 against judgment dated 25.10.2008 passed by Special Judge, NDPS Act, Jagdalpur (C.G.) in Special NDPS Case No. 76/2007, wherein the said court acquitted the respondent for commission of offence under Section 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "the NDPS Act").
2. As per the case of prosecution, an information received by Assistant Sub-Inspector (ASI) namely Chanderlal Dhruv on 20.10.2007 at 11.00 a.m. at police station- Keshkal. He recorded information in Rojnamcha Sanha and sent the same to Sub-Divisional Officer Police (SDOP), Kondagaon. The said police officer and other persons reached to the spot and after giving information to the respondent regarding their right to be

searched by any Gazetted Officer or Magistrate and after his consent, they started search and thereafter, two cartons were seized from possession of the respondent. Information of the proceeding was sent to SDOP and seized article which was weighed and found to be 16 kg. was handed over to in-charge of Malkhana namely Head Constable- Manoj Kumar Jain (PW-5) who kept the same in safe custody of police station. Matter was reported and investigated and after completion of trial, the trial court acquitted the respondent as mentioned above.

3. Learned counsel for the State/petitioner submits that the trial court has ignored evidence of investigating officer- Chanderlal Dhruv (PW-4) and Manoj Kumar Jain (PW-5). He further submits that the seized article was sent to laboratory and found to be ganja, therefore, finding arrived at by the trial court is liable to be reversed.
4. On the other hand, learned counsel for the respondent submits that there is violation of mandatory rules of the NDPS Act and seized article was not produced before the trial court and again, person who recorded FIR has investigated the matter, therefore, proceeding as terminated by the trial court is not liable to be interfered with. He placed reliance in the matter of **Gorakh Nath Prasad Vs. State of Bihar**, reported in **AIR 2018 SC 704** and **Mohan Lal Vs. The State of Punjab (Criminal Appeal No. 1880 of 2011)** decided by Hon'ble the Apex Court on 16th August, 2018.

5. ASI-Chanderlal Dhruv (PW-4) who seized article from respondent has deposed before the trial court that the seized articles were handed over to Head-Constable- Manoj Kumar Jain (PW-5). Head Constable- Manoj Kumar Jain (PW-5) deposed that the seized article were kept in Malkhana, but the said head-constable has not stated as to when the sample were withdrawn from Malkhana for sending the same to laboratory. It is not stated by him that after withdrawal of said sample, he handed over to any constable for examination in laboratory. Any constable has not been examined before the trial court that he received the sample from Malkhana and deposited the same to laboratory, therefore, it is not established that the article which was seized and kept in Malkhana was withdrawn and sent for examination to laboratory. Case of the prosecution is based on report of laboratory, but when it is not proved that sample of seized article was sent to laboratory, it cannot be said that the report is prepared from the sample seized in the present case, therefore, laboratory report is not proved to be report of sample of this case, that is not connected by evidence of in-charge Malkhana and head-constable who deposited the same to laboratory.
6. Dhansai (PW-1) & Sangram (PW-2) were witnesses of seizure have not supported version of the prosecution and person who weighed the seized article namely Ramsingh Nag (PW-3) has also not supported version of the prosecution.
7. The trial court has elaborately discussed the entire evidence and came to conclusion that the offence charged against the

respondent is not established. Looking to the entire evidence, this Court has no reason to substitute contrary finding and this Court has no reason to disturb the finding recorded by the trial court.

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

Sd/-
(Ram Prasanna Sharma)
Judge