

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.104 of 2009**

The State of Chhattisgarh, Through District Magistrate, Bastar
(CG)

---- Appellant

Versus

Jaan Nayak, S/o. Mahadev Nayak, by caste Harijan, Aged about
26 years, R/o. Kotpar Bardwarsai, Tahsil PS Kotpar Distt.
Koraput (Orissa)

---- Respondent

For the appellant/State : Shri Vinod Tekam, Panel Lawyer
For the respondent : Ms. Nirupama Bajpai, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03.10.2018.**

1. This appeal is directed against the judgment of acquittal dated 29.12.2008 passed by Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') Bastar at Jagdalpur (CG) in Special Case (NDPS) No.66/2007, wherein the said Court acquitted the respondent for the charges under Section 20(b)(ii)(B) of the NDPS Act.

2. As per the prosecution case, on 12.9.2007 Police Officer Sushanto Kumar Banerjee (PW-5) was on patrolling duty with his staff. When he reached near Farasgaon Bus Stand the respondent and another person were standing carrying bags in their hands. Having seen the police party, the respondent tried to escape but he had been caught by the police. After following the required formalities, contraband article weighing 7.150 kg in one bag and 9.100 kg in another bag were seized. The matter was

reported and investigated. The respondent was charge sheeted and acquitted after the trial.

3. Learned counsel for the state submits that non-compliance of Section 50 of the NDPS Act is not fatal in the present case, because the article was seized from the bag and it was not attached with the body of the respondent, therefore, provisions of Section 50 of the NDPS Act is not attracted. Provisions of Section 55 & 57 of the NDPS Act have also been complied with but the trial Court over looked the same and came to a wrong conclusion. Evidence of the investigating officer is of sterling quality, therefore, no corroboration is required to support the version of the investigating officer.

4. To substantiate the charge, the prosecution has examined as many as 5 witnesses. Sushanto Kumar Banerjee (PW-5) is a person who conducted search against the respondent. As per the version of this witness, he seized contraband article in two bags kept by the respondent and as per the version of this witness he handed over the contraband article to Head Constable Ganesh Borchariya for keeping the same in safe custody in the Police Station. As per the version of Sushanto Kumar Banerjee he returned to the Police Station after proceedings of seizure at about 20.05 hours. It means he returned about 8.05 pm. But as per the version of Ganesh Borchariya, he received the property in the afternoon at about 1.30 pm. again as per the versions of this witness seized articles were not sealed by the police authorities.

5. Again no one was examined before the trial Court who submitted the report of proceedings to the higher authorities as per Section 57 of the NDPS Act. Sushanto Kumar Banerjee (PW-5) admitted (para 20) that there is no acknowledgement in the record regarding sending the proceedings to Sub Divisional Officer (Police). The trial Court elaborately discussed the entire issue and came to a conclusion that Section 57 of the NDPS Act has not been complied with. Looking to the entire evidence, this Court has no reason to record a contrary finding and therefore, acquittal order passed by the trial Court is not liable to be reversed.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE