

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.117 of 2010****Judgment reserved on 16.01.2018****Judgment delivered on 06.02.2018**

The State of Chhattisgarh, Through the District Magistrate,
Jagdalpur (CG)

---- Appellant**Versus**

Chimpu @ Mukesh, S/o. Shratrughan, Aged about 22 years,
Occupation – Driver, R/o. Pyarelal Chowk, PS Basantpur, District
Rajnandgaon (CG)

---- Respondent

For Appellant/State	: Shri Arvind Dubey, Panel Lawyer
For respondent	: Shri Shri Sanjay Agrawal and Ms. Reena Singh, Advocates

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

CAV Judgment**Per Ram Prasanna Sharma, J**

1. This acquittal appeal is directed against the judgment dated 02.3.2009 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Bastar at Jagdalpur in Special NDPS Case No.74/2007 wherein the said Court acquitted the respondent from charges under Section 20b(ii) (C) of the Act in relation to illegal possession of contraband article ganja weighing 70 kg.

2. As per the prosecution case, Asst. Sub Inspector of Police SL Kashyap (PW-4) who was posted at Police Station Frejarpur received secret information that one person is transporting ganja

in a white Indica Car bearing Registration No.CG 04-H/6544, upon which the said Police Officer reduced the information in the rojnamchasanha kept in the Police Station and called two independent witnesses through one Police Constable who brought Ramesh Kumar and Anil Kumar at Police Station and thereafter information is reduced in writing as Ex-P/3. Again one panchnama was prepared for want of search warrant and the same was sent to Office of City Superintendent of Police. After that the Police Officer reached to Village Keslur with witnesses and waited for the vehicle. At about 14.30 hours they noticed one white Indica Car coming from village Sukuma side and the said car was stopped. The car was driven by the respondent. The respondent was noticed as per Section 50 of the Act that he can be searched by the Magistrate or any gazetted Officer, but he consented to be searched by the said Police Officer. Before the search the said Police Officer and other Police personnels were searched and witnesses were also searched. But no objectionable substances were found in their possession. After that the car was searched in which 10 packets of substance like ganja was found and seizure memo was prepared. The seized ganja was weighed by one Baidyanath (PW-5) and it found to be 70 kg. Two samples of 25 Grams from each packets were prepared from all 10 packets seized from the respondent and 20 sample packets were marked as A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1, F-2, G-1, G-2, H-1, H-2, I-1, I-2, J-1 & J2 and sealed and the same were handed over to one Bhuttu Singh (PW-

1) who was Assistant Sub Inspector and incharge of Malkhana. The samples were sent for chemical examination to Forensic Science Laboratory and as per the report (Ex-P/30), the samples were found to be ganja. The matter was investigated and after completion of investigation charge sheet was filed. The respondent did not plead guilty and the trial was conducted. After examination of the prosecution witnesses, statement of the respondent under 313 of the CrPC was recorded. After hearing learned counsel for the parties, the trial Court acquitted the respondent as mentioned above.

3. Learned counsel for the State submits as under:

(i) Though the witnesses of seizure have not supported the factum of seizure, but the factum of seizure is proved by the statement of police officers and the trial Court was not justified in discarding the statement of the police officers.

(ii) Seized ganja was kept in the safe custody in malkhana of the Police Station and the samples were sent for chemical examination and there was no possibility of tampering with the seized ganja, but the trial Court extended the benefit of doubt to the respondent which is not in the fitness of facts and circumstances of the case.

(iii) Minor omissions and contradictions are bound to occur but the trial Court discarded the whole prosecution

case on the basis of the such contradiction which is contrary to the law.

4. On the other hand, learned counsel for the respondent submits that finding arrived at by the trial Court is based on facts and circumstances of the case and marshalling of evidence is proper and the same is not liable to be reversed invoking the jurisdiction of the appeal.

5. The first point for consideration is whether it is open to this Court in an appeal against the order of acquittal to review the entire evidence to come to its own conclusion.

6. In the matters of **Sanwat Singh Vs. State of Rajasthan, AIR 1961 SC 715, State of Punjab Vs. Kulwant Singh alias Kanta (2008) 16 SCC 290 and Satya Narain Yadav Vs. Gajanand and another (2008) 16 SCC 609**, it is held that an appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. It is also held that the Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and law.

7. To substantiate the charge, prosecution has examined as many as five witnesses. Asst. Sub Inspector SL Kashyap (PW-4) was the star witness of the prosecution. As per the version of this witness, he seized 10 packets of substance like ganja and it is weighed by one Baidyanath (PW-5) and total weight of all 10

packets was found to be 70kg. He further deposed that two samples of 25 grams each from all the packets were prepared and sealed and marked as A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1, F-2, G-1, G-2, H-1, H-2, I-1, I-2, J-1 & J2 . As per the version of this witness, 20 packets of samples were handed over to Bhuttu Singh who was Asst. Sub Inspector and incharge of Malkhana. As per the version of this witness, 10 seized packets were sealed and specimen seal were prepared but ASI Bhuttu Singh rebutted this version. As per the version of Bhuttu Singh, he received only 10 packets of samples and 10 packets of ganja but no mark was found on 10 samples. He further deposed that no specific mark was found on the seized 10 packets. He further deposed that he has not mentioned in the malkhana register regarding weight of the 10 packets of the ganja.

8. Again Baidyanath (PW-5) rebutted the version of Asst. Sub Inspector SL Kashyap (PW-4). As per the version of this witness, he never weighed any ganja brought by the Police. Seizure witnesses Anil Kumar @ Lachinder (PW-3) has also rebutted the version of Police Officer SL Kashyap. As per the version of this witness, no ganja was seized in his presence.

9. Now the first point for consideration is whether any ganja was seized from the respondent and whether it was kept in safe custody after seizure and the same was sent to FSL for examination. It is settled law that version of Police officer cannot be discarded merely on the ground that he is a police officer.

Though independent seizure witnesses have not supported his version, but that is not sufficient to discard the statement of police officer. Though Asst. Sub Inspector SL Kashyap (PW-4) deposed that he has sealed the seized packets, but from his statement it is not clear whether he obtained signature from the witnesses present during seizure and whether it was affixed on the packets seized. As per the version of Bhuttu Singh (PW-1) no mark was found on the packets given to him. Police Officer who seized the article was under obligation to put his signature and signature of the witnesses on the packets so that it cannot be tampered or atleast save the articles from reasonable likelihood of tampering. But, no such mark was affixed on the packets seized and again as per the version of Bhuttu Singh (PW-1), no mark was found on the packets of the samples but as per the statement of SL Kashyap (PW-4) he marked the articles as A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1, F-2, G-1, G-2, H-1, H-2, I-1, I-2, J-1 & J2 on the sample packets which must have been found on the packets deposited in the malkhana and that creates serious doubt as to whether the packets deposited in the malkhana were the same separated from the substance alleged to have been seized from the respondent. It create serious doubt as to whether same samples were sent for chemical examination.

10. Case of the prosecution is based on report of FSL and when it is under cloud that it was the same samples which were seized then it is difficult to conclude that the FSL report was

regarding the substance which was seized from the respondent. It is settled law that graver the offence stricter the proof. In the present case, the offence is punishable with stringent sentence then heavy burden lies on the prosecution to prove its case in the letter and spirit of the law governing the case. But that is not the case here and when statement of the two police officers are contrary to each other, the trial court was not in a position to come to a conclusion that the articles were seized from the respondent and that was contraband ganja. The evidence adduced by the prosecution is not satisfactory and we are of the view that the finding arrived at by the trial Court is in the fitness of factual matrix and legal aspects of the matter and not liable to be reversed or modified. Thus the appeal fails and is accordingly dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)