

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No. 87 of 2010

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

---- Appellant

Versus

- Bhimsen Sodhi, S/o Mukka Sodhi, Aged about 23 years, R/o Village Sodiguda, P.O. Bafanpalli, P.S. Podiya, District – Malkangiri (Orissa)

---- Respondent

For Appellant	:	Shri Arvind Dubey, Panel Lawyer.
For Respondent	:	None

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Smt. Justice Vimla Singh Kapoor**

Judgment on Board By

Prashant Kumar Mishra, J.

18/06/2018

1. State has challenged the respondent's acquittal for offence under Section 20(b)(2-C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act of 1985') for having allegedly found in possession of 20 Kgs of Ganja at about 20.00 hours on 22-09-2007.
2. The Police Station Frejarpur received the secret information at 18.40 hours on 22-09-2007 that two persons travelling from Malkangiri (Orissa) to Jagdalpur in the Bus of Gupta Travels bearing registration No. C.G. 17 F/1219 are carrying Ganja in two cartons. A.S.I. Dewangan of Police Station Frejarpur (not examined) recorded the secret information in the Rojnamcha Sanha; summoned witnesses namely, Dhaniram & Mahendra

Sethia; recorded panchnama of his inability to obtain search warrant; and thereafter sent the information to C.S.P. Office through Constable No. 624 Harishchand Netam and proceeded towards the place of occurrence. He intercepted the vehicle at 20.00 hours in front of Parpa (Frejarpur) Police Station and made inspection on which respondent was found to possess two cartons containing ganja. After completing necessary formality by obtaining the respondent's consent to be searched by the A.S.I., S.L. Kashyap, preparation of Talashi Panchnama, seizure panchnama etc. the contraband was recovered which was weighing about 20 Kgs kept in two cartons. Two samples of 50 grams each were separated from each carton and one of the sample packet (A-1) was sent for FSL examination which was reported to be positive vide Ex. P-25.

3. In course of trial, the prosecution examined (PW-1) Sudarshan Dubey, Head Constable of Police Station Parpa, (PW-2) Butu Singh, Head Constable posted as Malkhana incharge of Police Station Parpa, (PW-3) Mahesh Sethia, (PW-4) Dhaniram, (PW-5) Harishankar Netam and (PW-6) S.L. Kashyap, A.S.I. of Police Station Parpa (Frejarpur). The respondent abjured the guilt but did not examine any defence witness.
4. The trial Court has acquitted the respondent mainly on account of failure of the prosecution to comply the mandatory provision under Sections 55 and 57 of the Act of 1985.
5. Shri Arvind Dubey, learned State Counsel would read the entire evidence to submit that there is compliance of provisions contained under Sections 55 & 57 of the Act of 1985, therefore, the acquittal is not at all justified.
6. To examine whether there has been compliance of Section 55 of the Act, we have perused the entire record.
7. (PW-2) Butu Singh, Malkhana Incharge of Police Station Parpa has clearly

stated that when he received the two packets of contraband, it were not sealed. He also admits that he did not produce any sample seal, nor the seized packets were carrying any specific seal. He would also admit that when seized articles are produced in the Court, it is recorded in the Malkhana register but there is no such entry in Ex.P-4. (PW-6) S.L. Kashyap who has conducted the investigation as A.S.I. Police Station Parpa (Frejapur) has also admitted in para 14 of his statement that he did not produce the seized contraband before S.H.O. and that the S.H.O. had not put his seal over the contraband. He would also admit that he has not prepared any report regarding compliance of Section 55 of the N.D.P.S. Act. When these statements are read in conjunction with the documents Ex. P-4 (C), it is crystal clear that the said document also does not carry any endorsement that the two cartons of ganja were sealed. Similarly, it does not mention that two packets of ganja, 50 grams each, were received in sealed condition.

8. True it is that when one packet of sample was handed over to Constable No.624 (PW-5) Harishankar Netam, it is mentioned that the packet was sealed. However, it may not assist the prosecution because initial document itself does not mention that the sample packet was sealed. Moreover, the investigating officer recovered two cartons carrying 10 Kg of ganja each and two samples of 50 grams each were drawn. However, both the samples were not sent for FSL examination.
9. There is another discrepancy in the documentation prepared by the Investigating Officer inasmuch as the Rojnamcha Sanha recorded at 14.00 hours on 22-09-2007 vide Ex. P-19 was numbered as Rojnamcha Sanha 21 whereas the Rojnamcha Sanha in the Malkhana Register is numbered as 20 of 22-09-2007. If the first Rojnamcha Sanha recording the secret information carries Sanha No.21, it is impossible that the Rojnamcha Sanha

regarding depositing of seized contraband would carry an earlier Rojnamcha Sanha number. Similarly, (PW-2) Butu Singh has stated in para 4 of his statement that he received the contraband at 1.00 p.m. on 22-09-2007 whereas the secret information was itself registered and the contraband was recovered at about 21.00 hours i.e. 9.00 P.M. in the night of 22-09-2007. Even if there is mistake by (PW-2) Butu Singh in mentioning the time, the effect remains that the number of document regarding seizure of contraband was not done by the concerned staff of the police station sincerely and diligently which adversely affects the prosecution. It is also to be seen that the report regarding compliance of Section 57 of the Act has to be prepared for forwarding it to the superior police officer but no such report was prepared by the I.O. (PW-6) S.L. Kashyap as admitted by him in para 14 of his deposition.

10. In view of the aforesaid reasons, we have found that the learned trial judge has recorded the judgment of acquittal by correctly marshaling the evidence on record, therefore, no case for interference in the impugned judgment of acquittal is made out.
11. In the result, the appeal, being *sans* merit is liable to be and is hereby dismissed.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Vimla Singh Kapoor)