

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.130 of 2010**

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

---- Appellant**Versus**

Sanjay Mahra, S/o Late Jageshwar Mahra, Aged about 27 years,
Occupation- Labour, R/o Bhad Thana, Bhalumada, District
Anuppur (MP)

---- Respondent

For Appellant/State	: Shri Arvind Dubey, Panel Lawyer
For respondent	: None

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

Judgment on Board**Per Ram Prasanna Sharma, J****09/03/2018**

1. This acquittal appeal is directed against the judgment dated 30.4.2009 passed by Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Jagdalpur in Special Case No.27/2008 wherein the said Court has acquitted the respondent from charges under Section 20b(ii)(C) of the Act in relation to illegal possession of contraband article Ganja.

2. As per the prosecution case, on 9.4.2008, after receipt of information, Assistant Sub-Inspector of Police, Bhuneshwar Singh reached to village Farasgaon with other Police officials, Constables and Head Constable and when they searched the vehicle- Tavera bearing registration No. MP 18 BB 1757 at about

7.50 am near Kondagaon, they found some article in the said vehicle and it was seized from the possession of the respondent. The seized article was weighed to be 106 kg 100 gms. Samples were separated from the said article and were sealed. The sealed articles were given to Malkhana In-charge of Police Station, Farasgaon. Thereafter, those samples were sent for chemical examination to Forensic Science Laboratory (FSL) and test was found positive as the article is contraband Ganja. After completion of investigation, charge sheet was filed and after completion of trial, the Special Court acquitted the respondent of the charges mentioned above.

3. Learned counsel for the State submits as under :

(I) The trial Court is not justified in discarding the evidence of the Investigating Officer and other witnesses of search on minor contradictions.

(ii) Though seizure witnesses have not supported the version of the prosecution, statement of Police Officer is sufficient to establish the guilt of the respondent, but the trial Court ignoring the settled principle of law arrived at a wrong conclusion.

(iii) Though the officer In-charge of Malkhana has not stated that no sample was given to him to deposit the same in Malkhana, but from the statement of the Investigating Officer, it is clear that he has prepared the samples from the

seized article, therefore, the guilt has been brought home against the respondent.

4. We have heard learned counsel for the appellant and perused the record of the Court below.

5. The core issue for our consideration is whether the seized article was contraband Ganja and whether it was kept in safe custody after seizure. Mahesh Kunjam (PW6) who is Head Constable of Police Station, Farasgaon, deposed that the substance measuring 106 kg and 100 gm was given to him for depositing in Malkhana and he had deposited the same after registering it at Sr. No. 45, but in cross-examination, he has deposed that no sample packet was given to him to deposit the same in the Malkhana. Again, he deposed that no sealed packets were given to him and the packets which were given to him were not sealed.

6. As per version of Bhuneshwar Singh (PW4), Assistant Sub-Inspector, samples of seized article were sent to FSL through memo of Sub-Divisional Officer Police, Kondagaon but from his statement it is not clear as to where the samples were kept. Mahesh Kunjam (PW6) clearly deposed that no sample packets were given to him to deposit the same in Malkhana. As per version of both the witnesses, the contraband article Ganja was seized from the possession of the respondent and samples were separated from the said substance, but there is no evidence on record that any sample was kept by these two witnesses and

same were sent to FSL, Raipur for its examination. The whole substance was not sent to the FSL for its examination.

7. The entire case of the prosecution is based on the report of samples sent to the Forensic Science Laboratory, but it is not proved that the samples sent to the FSL were kept in safe custody of the witnesses. It is not established from the evidence as to where the samples were kept and the same were sent to FSL, therefore, it cannot be held that the Forensic Science laboratory tested the samples of contraband Ganja seized from the respondent. In this way, the report of FSL cannot be used against the respondent and except this report, there is nothing on record to establish that the substance seized was contraband Ganja.

8. Apart from this report, the other independent witnesses namely- Jageshwar (PW3) and Chaitram (PW5) have denied the very factum of seizure from the respondent, therefore, the seizure from the respondent is also under the cloud of suspicion.

9. In an overall assessment, we are of the view that the finding recorded by the trial Court is based on proper marshalling of evidence and not liable to be interfered with.

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

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)