

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 40 of 2010**

The State of Chhattisgarh Through District Magistrate Bastar
(CG)

---- Appellant**Versus**

Phoolsingh S/o Parsadi Patel, aged about 45 years, R/o
Semarchuva, P.S. Jarhagaon, District Bilaspur (CG)

---- Respondent

For Appellant	: Smt. M. Asha, Panel Lawyer
For Respondent	: None

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****25.10.2018**

1. This appeal is preferred against the judgment dated 17.2.2009 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), in Special NDPS Case No.59/2007, whereby the said Court has acquitted the respondent of the charges under Section 20(b)(ii) B of the NDPS Act.
2. As per the case of prosecution, on an information receiving by the Police Officer, Rajesh Prasad Mishra (PW4), he rushed to the spot after recording the information and found the respondent possessing a gunny bag at the Bus Stand of Kondagaon. The gunny bag was searched and contraband article Ganga was found in it.

Weight of the Ganja was 7 kg. Matter was investigated and the respondent was charge-sheeted. After completion of trial, the trial Court acquitted the respondent of the above charges.

3. Learned counsel for the State submits that the trial Court is not justified in holding that Section 55 and 57 of the NDPS Act has not been complied with. Section 50 of the said Act is applied only when search of a person is made and not to the search of belongings of the suspected. He further submits that in the present case, the contraband article Ganja was found in a gunny bag, therefore it is not a case of search of a person and Section 50 of the NDPS Act is not applicable in the present case, therefore, the finding arrived at by the trial Court is not liable to be sustained.
4. Rajesh Prasad Mishra (PW4) was Assistant Sub-Inspector at Police Station- Kondagaon and he made search of the respondent and seized the contraband article Ganga from a gunny bag. As per version of this witness, two packets of 50 gm each of Ganja were prepared from the sample of the seized article and it were marked as A1 and A2 and the same were handed over to the In-charge of Malkhana for safe custody. But version of this witness is contradicted by the version of Head Constable- Ghanshyam Markam (PW3). As per version of In-charge of Malkhana mark like A1 and A2 was not specifically mentioned on the samples handed over to him. He further deposed that it is not mentioned in record that the packets were sealed by the Police Officer who was handing

over the article. In absence of any mark and seal as mentioned by the witness of seizure, the trial Court opined that it is not safe to hold that samples were sent which were prepared after seizure of the article. If the samples which were sent were not of the seized article, then report of F.S.L. cannot be used against the respondent. On this count, the trial Court recorded the finding of acquittal. This Court has re-assessed the evidence and found no reason to substitute a contrary finding.

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

Sd/

(Ram Prasanna Sharma)
JUDGE