

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.357 of 2010**

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

---- Appellant

Versus

1. Mohd. Nazir, S/o. Samsul Husain, Aged about 32 years, R/o. Bhilai Ruwabhandha
2. Yogesh Das, S/o. Shantanu Das, Aged about 32 years, R/o. Bhilai Sector -6.

---- Respondents

For Appellant/State	: Shri Prasoon Bhaduri, Govt. Advocate
For respondent	: None present

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

Judgment on Board**20.3.2018****Per Ram Prasanna Sharma, J**

1. This acquittal appeal is directed against judgment dated 06.9.2008 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.09/2007 wherein the said Court acquitted the respondents from charges under Section 20b(ii)(C) of the Act in relation to illegal possession of contraband article ganja weighing 130 kg.

2. As per the prosecution case, on 13.10.2006 Station House Incharge of Police Station Kondagaon, Bhartendu Dwivedi (PW-5) received information that contraband article transported in a Ford Car bearing registration No.CG 07 ZD 6386 and upon that

information, he recorded the same in rojnamchasanha and proceeded towards the spot. With the help of other police personnels and independent witnesses, the car was searched and contraband article kept in 10 bags were seized. Seizure memo was prepared on the spot vide Ex-P/15 and two sets of samples were separated from the seized articles. Seized articles were weighed on the spot and it was found to be 130 kg. After investigation, charge sheet was filed and after trial, the Court below acquitted the respondents as mentioned above.

3. Learned counsel for the State submits as under:

(i) Contraband articles were seized from the possession of both the respondents who were sitting in the car in which the contraband articles were kept but the trial Court recorded finding of acquittal on the basis of minor omissions and contradictions.

(ii) There is no reason to disbelieve the evidence of Investigating Officer who conducted the whole investigation and proved the case of the prosecution.

(iii) The finding recorded by the trial Court is based on extraneous material and not liable to be affirmed.

4. Case of the prosecution is based on seizure of 10 bags in which contraband articles were kept. But samples were not taken from each bags and it is deposed by Bhartendu Dwivedi (PW-5) that he separated only two sample packets from the seized articles. He deposed that two sample packets were deposited in the malkhana of the Police Station, but Head Constable Sukhlal

Baghel (PW-1), who was the incharge of Malkhana, rebutted the version. As per Sukhlal Baghel (PW-1), sample packets A & B were not recorded in the malkhana register. From the version of this witness, it is not clear that whether the samples prepared by Inspector Bhartendu Dwivedi was kept in malkhana and the same samples were sent for chemical examination to Forensic Science Laboratory. No samples were taken from other bags and seized articles were not produced before the trial Court.

5. The prosecution is under obligation to prove that the samples separated from the seized articles were kept in safe custody after sealing the same and those packets were sent for chemical examination, but from the evidence it is not established that the packets separated from the seized articles were kept in malkhana and the same were sent to Laboratory. The case of the prosecution is based on report of the FSL but it is not proved that the seized articles were sent to the Laboratory for examination. The report of the Laboratory cannot be used against the respondents. There is no other expert opinion regarding seized articles that the same was contraband article ganja. In this way, there is no evidence to establish that the seized articles were contraband article ganja. The trial Court opined that both the seizure witnesses have turned hostile and the case of the prosecution is not established as per the provisions of the Act. The findings arrived at by the trial Court is based on relevant facts

submitted before it and it cannot be said that the judgment is based on irrelevant or extraneous matters.

6. For the foregoing, we do not find any substance in this appeal against the acquittal, which deserves to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)