

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.583 of 2015**

Munna Sarthi @ Mannu, S/o. Khedan Sarthi, aged about 37 years, R/o. Gidhpuri, Chowki Gidhpuri, Police Station Palari, Civil and Revenue District Baloda Bazar-Bhatapara (CG)

---- Appellant**Versus**

State of Chhattisgarh, Through Police Station Palari, Chowki Gidhpuri, Distt. Baloda Bazar-Bhatapara (Chhattisgarh)

---- Respondent

For the appellant : Shri Alok Kumar Pandey, Advocate
 For the respondent/State : Shri Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****01.9.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 09.01.2015 passed by Special Judge under Narcotic Drugs and Psychotropic Substances Act, 1985/First Additional Sessions Judge, Baloda Bazar (CG) in Special Case (NDPS) No.03/2013, wherein the said Court convicted the appellant for commission of offence under Section 20(b)(ii)(C) of the NDPS Act and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1 lakh with default stipulations.

2. As per the prosecution case, on 26.6.2012 Assistant Sub Inspector SP Ghrit Lahare (PW-5) of Police Chowki Gidhpuri received information that the appellant is in possession of contraband article ganja. After recording the said information he rushed to the spot along with other police officials and search was

conducted in the house of the appellant and one yellow plastic sack containing 23 packets of ganja like substance was found and the same was seized. Seized articles were weighed in physical balance and the quantity was found to be 23 kg. After investigation, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Material witness Jeevan Yadav (PW-2) and Deepak Das (PW-4) have turned hostile and in absence of their evidence prosecution case is not established.

(ii) At the time of the search, the appellant was not present, false seizure was made in his absence and therefore, no liability can be fastened upon the appellant.

(iii) Seized articles were not proved to be contraband article ganja, therefore, finding of the trial Court is liable to be reversed.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence which is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the material available on record.

6. The core issue for consideration before this Court is whether the seized article was sent for chemical examination to

Forensic Science Laboratory and whether the report of the said laboratory can be used against the present appellant.

7. Case of the prosecution is based on report of the Forensic Science Laboratory which shows that the article received by the laboratory was contraband ganja.

8. In the present case though Asst. Sub Inspector SP Ghitlahare (PW-5) deposed that he has given the said article in the Malkhana of Police Outpost Gidhpuri, but no one was examined from the police outpost to establish the fact that any such article was deposited in the said Malkhana. It is also not clear that the article was kept in the safe custody of the Malkhana by officer incharge of the said Malkhana. No one was examined from the Malkhana of said police outpost, no register was produced before the trial Court to establish that the seized article was sealed and kept in the Malkhana.

9. It is not clear that the seized article was deposited in the Malkhana. In absence of any evidence of depositing the same in the malkhana it is not clear as to when the said article was handed over to a person who produced it before the FSL. No one was examined to establish that he received the articles from the Malkhana and deposited the same in the FSL. In absence of evidence of any one from Malkhana and in absence of evidence of any person who collected the article from the Malkhana and deposited the same to FSL, it cannot be said that the seized article and the samples of the said article were deposited in FSL

for examination. Since it is not proved that the seized article or samples were deposited in the FSL, report of the laboratory cannot be proved to be of seized article or samples of that article.

10. In the facts and circumstances of the case, report of the laboratory cannot be used against the present appellant. Therefore, it cannot be said that the ganja was seized from the appellant. Looking to the entire evidence, finding arrived at by the trial Court is not sustainable.

11. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under Section 20(b)(ii)(C) of the NDPS Act. The appellant is in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

Sd/-

(Ram Prasanna Sharma)

JUDGE