

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 143 OF 2017

State of Goa, Thr. Police Inspector, Anti
Narcotic Cell Police Station, Panaji ... Applicant

Versus

Anthony Chike Okoye ... Respondent

Shri S.R. Rivankar, Public Prosecutor for the Applicant.

Shri Kaif Noorani, Advocate under Legal Aid Scheme for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 25th SEPTEMBER 2018.

P.C:

This is an application for leave to appeal against acquittal.

2. On 23/12/2012, P.I. Suraj Halarnkar, attached to Anti Narcotic Cell Police Station had received an information to the effect that one male foreigner of Negro race, aged between 30 to 35 years, strong built, tall height, dark complexion, wearing a red T-Shirt and cargo shorts, will be coming on a black coloured Honda Activa Scooter to deliver narcotic drug i.e. charas to the prospective customer on 24/12/2012 between 3.00 to 4.00 hours at Aguada Jail, Helipad Junction road, Sinqerim, Candolim, Bardez, Goa. The said information was reduced to writing and a copy of the same was sent to Deputy Superintendent of Police. P.I. Suraj Halarnkar, accordingly, in the presence of two panchas, conducted a raid at around 3.25 a.m. on 24/12/2012, in which 224 sticks weighing 2.933 kgs. of charas were

allegedly recovered from the respondent. PI Suraj Halarnkar, accordingly, prepared a seizure panchanama and the contraband seized was sent for chemical analysis. After completion of investigation, a chargesheet was filed against the respondent for the offence punishable under Section 8(c) read with Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act, for short) for having found in illegal possession of commercial quantity of charas.

3. At the trial, the prosecution examined the Chemical Analyser Smt. Nilima Mishal (PW1) along with other witnesses. The learned Special Judge although found that the prosecution has established the compliance with the provisions of Sections 42 and 50 of the Act, the learned Special Judge did not find the evidence of Chemical Analyser to be acceptable and trustworthy. The learned Special Judge has extensively dealt with the evidence of Smt. Nilima Mishal (PW1) from para 21 onwards and has found in para 83 of the judgment that although the prosecution has proved that the substance was seized from the respondent, the prosecution has failed to prove that the substance recovered was charas. In that view of the matter, the respondent came to be acquitted by a judgment and order dated 30/01/2017. Hence, this application.

4. I have heard Shri Rivankar, the learned Public Prosecutor for the applicant and Shri Noorani, the learned Counsel appearing on

legal aid for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the impugned judgment and the prosecution evidence as led.

5. A bare perusal of the report of the Chemical Analyser shows that the Chemical Analyser has not stated the details of the tests conducted in her report, although the tests conducted were deposed to in her evidence. The learned Special Judge has noted the decision of this Court in Criminal Appeal No.25/1997 (**Mohammed Y. Kotroo Vs. State of Goa**), in order to find that absence of giving details of the tests in the evidence, would not suffice. The learned Special Judge has also considered that Nilima Mishal (PW1) had only analysed 78 pieces out of the total 224 pieces sent and the analysis was conducted over a period of about 10 to 14 days and the findings of the tests were recorded at the end of the 14th day. The learned Special Judge has found that Nilima Mishal (PW1) did not record the observations and the findings of the tests conducted at the end of every day. Be that as it may, considering the decision of this Court in the case of **Mohammed Y. Kotroo** (supra), the learned Special Judge, in my considered view, has rightly found that the mention of the tests only in the evidence would not be sufficient.

6. Shri Noorani, the learned Counsel for the respondent has also placed reliance on the decision of the Supreme Court in the case of **Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018 SCC**

Online SC 459 and in the case of **Mohan Lal Vs. State of Punjab 2018, SCC OnLine SC 974**. There are two contentions raised on the basis of the aforesaid decisions. Firstly it is contended that PI Suraj Halarnkar, who was the complainant, could not have been the Investigating Officer as held by the Honourable Supreme Court in the case of **Mohan Lal** (supra). In so far as the case of **Arif Khan** (supra) is concerned, it is submitted that even where the accused expresses that he does not want to be searched in the presence of a Magistrate or a Gazetted Officer, still the accused has to be searched in the presence of a Gazetted Officer. It is pointed out that none of the members of the raiding party, in this case, were gazetted officers. Obviously, the learned Special Judge had no occasion to consider the decisions in the case of **Mohan Lal** (supra) and **Arif Khan** (supra) in as much as both these decisions are rendered after the judgment of the learned Special Judge. I do not find it necessary to go into the said question, considering the fact that the evidence of Nilima Mishal (PW1) has rightly been found to be not satisfactory, which is a plausible view taken by the learned Special Judge. Thus, no case for grant of leave is made out. It is now well settled that in an appeal against acquittal, this Court cannot reappraise the evidence unless and until the view taken by the Trial Court is perverse or is an impossible view. In that view of the matter, I find that the application is without any merit and it is, accordingly, dismissed.

C.V. BHADANG, J.

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