

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.176 of 2009

State of Chhattisgarh through the District Magistrate, District Bastar,
Chhattisgarh

---- Appellant

versus

Sukhchand, S/o Sudaru, aged about 40 years, occupation Labour, R/o
Borpadar, Police Station Kotwali, Jagdalpur, Chhattisgarh

--- Respondent

For Appellant : Shri Alok Nigam, Govt. Advocate
For Respondent : Ms. Nirupama Bajpai, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13.9.2019

1. The instant appeal has been preferred by the State against the judgment of acquittal dated 31.3.2009 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (henceforth 'the Act'), Jagdalpur in Special N.D.P.S. Case No.2 of 2007, whereby the Special Judge has acquitted the accused/Respondent of the charge framed under Section 20(b)(ii) (B) of the Act.
2. Facts of the case, in brief, are that on 8.11.2006 at about 23:20 hours, Assistant Sub-Inspector C.L. Nirmalkar (PW3) received information that two persons were having Ganja in a bag and were waiting at the bus-stand for going to Raipur. He recorded this information and after completion of necessary formalities reached at the spot along with staff and witnesses. He completed all the necessary formalities for search of the Respondent. During

search, he recovered 12.100 Kgs. of Ganja from the Respondent. He prepared two sample packets each of 50-50 Grams and marked them as Articles A1 and A2. He seized both the sample packets and remaining Ganja vide Ex.P18. After return to the police station, he deposited the seized property in the Malkhana. He registered First Information Report and forwarded the information of complete action taken to the higher officer. One of the sample packets was sent to the Forensic Science Laboratory vide Ex.P25. FSL report is Ex.P1 which is positive. On completion of the investigation, a charge-sheet was filed. Charges were framed.

3. In support of its case, the prosecution examined as many as 3 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Respondent/accused denied the guilt and pleaded innocence. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment dated 31.3.2009, the Trial Court acquitted the Respondent of the charge framed under Section 20(b)(ii)(B) of the Act on the ground that mandatory provision of Section 55 of the Act has not been complied with as also on the ground that there is no entry in the Malkhana register about deposit of sample packets of Ganja and, therefore, seizure of the sample packets of Ganja which was sent to the FSL for examination is suspicious. Hence, this appeal by the State.
5. Learned Counsel appearing for the Appellant/State submits that there is sufficient evidence available on record on the basis of

which it is well established that all the mandatory provisions of the Act are duly complied with. From the evidence on record, it is also established that the offence was committed by the Respondent/accused.

6. Learned Counsel appearing for the Respondent opposes the above submission and submits that the Trial Court has rightly acquitted the Respondent of the charge framed against him.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The evidence available on record shows that Investigating Officer of the offence in question C.L. Nirmalkar (PW3) was Assistant Sub-Inspector at the relevant time. He was not the Station House Officer of Police Station Jagdalpur. In paragraph 13 of his statement, he has stated that after return to the police station, he handed over the seized property to the Malkhana Incharge Assistant Sub-Inspector Guniram Baghel (PW2). Guniram Baghel (PW2) has supported the above statement of C.L. Nirmalkar (PW3). However, Guniram Baghel (PW2) has admitted that in the entries of Malkhana register (Ex.P4), there is no mention of deposit of sample packets. From perusal of the entire evidence adduced by the prosecution, it is clear that both C.L. Nirmalkar (PW3) and Guniram Baghel (PW2) were not the Station House Officer of the concerned police station. Before depositing the seized Ganja and other articles in the Malkhana, there is no evidence on record to show that as required under Section 55 of the Act seal of the Station House Officer of the police station was affixed on the articles deposited in the Malkhana. Thus, the finding of the Trial

Court that compliance of the provision of Section 55 of the Act was not done is in accordance with the evidence available on record. Apart from this, from the admissions made by Guniram Baghel (PW2), it is also clear that no entry of deposit of sample packets in the Malkhana was made in the Malkhana register (Ex.P4). Therefore, from where and which sample packet was sent to the FSL for examination is suspicious. Thus, the finding of the Trial Court in this regard is also in accordance with the evidence available on record. From the above discussion, I find that the Trial Court has rightly acquitted the Respondent.

9. Consequently, I find no merit in the appeal. It is, therefore, dismissed.
10. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE