

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 154 of 2009**

State of Chhattisgarh, Through District Magistrate, Rajnandgaon (C.G.)

---- Appellant**Versus**

Chandrakishore S/o Bramhadev Singh Rajput, Aged about 35 years, R/o Lohiya, P.S. City Kotwali, District Rajnandgaon (C.G.).

---- Respondent

For Appellant	:	Mr. Alok Nigam, Govt. Advocate
For Respondent	:	None

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****19/07/2019**

1. This acquittal appeal is preferred under Section 378 (4) of the Cr.P.C against the judgment dated 28/11/2008 passed in Special Case No. 08/2008 passed by the Special Judge, NDPS Act, Rajnandgaon, whereby the Appellant has been acquitted from the charge punishable under Section 20 (b) 20 (b) of the NDPS Act.
2. Facts of the case are that on 25/06/2008, SHO- S.S. Sharma (PW6) received a secret information that the accused/Respondent who is residing as a tenet at Motipur possessing cannabis in his house for selling. He recorded the information vide Ex.P.22 and informed the same to his higher official vide Ex.P.23. Mukhbeer Panchanama had been prepared vide Ex.P.27. Other formalities were completed. Thereafter, he along with his staff reached to the house of the

accused. The accused was apprised about the information received from the informant and sought his consent for search vide Ex.P.2. and the search of his house vide Ex.P.3. While search cannabis and Rs. 1000/- was recovered which was kept in a steel box wrapped in a plastic bag. Recovery memo was prepared vide EX.P.7. Thereafter on further search of the house, more cannabis was recovered which was found underneath the bed, kept in a briefcase. On being weight, total 19 kg ganga was found. Two sample packets of 50 – 50 grams were made. A notice under Section 91 of the Cr.P.C had been given to the accused vide Ex.P.-29. Dehati Nalishi was prepared. The police team came back to the police station and offence has been registered and in the information of the entire proceeding had been given to the Superior official vide Ex.P.-13. The contraband had been deposited at Malkhana in a sealed condition. The samples packets of the contraband had been sent to the Forensic Science Laboratory, Raipur for examination. After completion of the investigation, a charge-sheet has been filed. After trial, the learned trial Court acquitted the accused/Respondent on the ground that mandatory provisions of Sections 42, 55 & 57 of the Act have not been complied with.

3. Counsel for the State submits that the Court below has erred to disbelieve the statement of the Investigation Officer, S.S. Sharma (PW6), who has categorically stated that the samples of the cannabis had been sealed and kept in Malkhana at police station and the same was sent to the Forensic Science Laboratory Raipur vide Ex.P.-32. The samples were also received in a sealed condition, therefore, provisions of the Act have been properly followed by the prosecution. Thus, the

order passed by the Court below is bad in law and liable to be set-aside.

4. None for the Respondent.
5. I have heard counsel for the Appellant and perused the record to find the correctness of the impugned judgment.
6. Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 reads as under:-

“ 55. Police to take charge of articles seized and delivered. - *An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him and shall, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of officer-in-charge of the police station”*

7. In case in hand, statement of S.S. Sharma (PW6) has to be looked into in light of the above provisions.
8. Though in para 19 of his statement S.S. Sharma (PW6) has stated that the seized contraband had been deposited in a sealed condition by him in the *Malkhana*, but the entries of the *Malkhana* register has not been produced before the Court. In para 26 also, this witness has admitted that the *Malkhana* register has not been submitted with the charge-sheet. Apart from this, neither any entry has been proved in the register, nor statement of *Malkhana Moherir* was made to the

extent that in which condition these samples were deposited and taken from the *Malkhana* and who had taken these samples. No such evidence has been produced in this regard.

9. Considering all the aspects of the matter, it is clear that Section 55 of the NDPS act have not been properly complied with. Thus, the finding of the trial Court is in accordance with law and the accused/Respondent has rightly been acquitted from the charges.
10. Accordingly, I do not find any merit in this appeal. The appeal is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge