

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 448 of 2014

- State Of Chhattisgarh Through Police Station Kota, District Bilaspur C.G.

---- **Petitioner**

Versus

- Shailendra Saket S/o Ramnihor Saket Aged About 22 Years R/o Village Tikuri, PS University, District Rewa M.P.

--- **Respondent**

For State : Mr. Aditya Sharma, PL

D.B.: Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Goutam Bhaduri, J.

20/09/2019

Heard on I.A. No. 01/2014 for condonation of delay in filing the petition seeking leave to appeal.

2. On due consideration, delay of 21 days in filing the petition deserve to be and is hereby condoned. I.A. No. 01/2014 is thus allowed.

3. The instant petition seeking leave to appeal is filed against the order dated 16 January, 2014 passed in Sessions trial No. 19/2012 by the Special Judge Bilaspur (NDPS Act). As per case of the prosecution, on 06.06.2012 police received an information that at village Vindaval Dabripara near forest, a Bolero Jeep bearing registration No. MP 17TA/1089 was parked in an abandoned condition in which the cannabis like substance are loaded. After preparing *panchnama* to this effect, the police informed the SDO Kota vide Ex. P-15 regarding parking of abandoned jeep and rushed to the spot

immediately. Subsequently, the *panchnama* Ex. P-5 was prepared as the vehicle was found in damaged condition. Subsequent thereto, 13 polythene packets containing cannabis were found kept in the rear seat of the said Bolero Jeep which were recovered under recovery *panchnama* Ex. P-6. On examination by sniffing and burning, the said substance was found to be cannabis vide Ex. P-7, which on weighment vide Ex. P-9 came out to be 60 kilograms and then after being homogenized vide Ex. P-10 two samples of 200 grams each were taken out. After seizure of the samples in presence of the witnesses under Ex. P-11 they were sealed under Ex. P-13 and sent to FSL for chemical examination. The documents related to the Bolero Jeep in question were also seized under Ex. P-12. Maalkhana mohorir of Police Station Kota was handed over the seized contraband vide Ex. P-18 for being kept in safe custody. After completing procedural formalities, Dehati Nalasi Ex. P-24 was recorded on the basis of which FIR Ex. P-25 was registered after the police people return to the police station. On further inquiry, Smt. Rajkumari Shrivastava was found to be the owner of the Bolero Jeep which at the relevant time was being driven by Salendra Saket - the accused herein. The FSL report affirmed the fact that the goods sent were cannabis which is proved vide Ex. P-29. Having found the case against accused charge-sheet was filed under Section 20 (B) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "NDPS Act").

4. The trial Court after a evaluating the evidence acquitted the accused therefore, the present petition has been filed seeking leave to appeal.

5. Learned counsel for the State would submit that the vehicle was found in abandoned condition and after the ownership of the vehicle was inquired, it was found that the vehicle belonged to one Rajkumari Shrivastava resident of Rewa which was being driven by its driver Salendra Saket who was made an accused. It is stated that there is no dispute of the fact that the seizure of cannabis was made from the vehicle which belonged to Rajkumari Shrivastava. From the affidavit of the owner of the vehicle also it is established that on the date of incident the said vehicle was being driven by the present applicant. Transportation of the cannabis by the said vehicle and subsequent seizure thereof is also not in dispute and therefore, the judgment impugned acquitting the respondent/accused is not based on the proper appreciation of the evidence on record.

6. We have heard counsel for the State and perused the entire material on record.

7. Admittedly the vehicle in question was found in an abandoned condition at Vindaval Dabripara, and the *panchnama* regarding breaking open its lock was drawn vide Ex. P-5. Perusal of Ex. P-5 would show that when the vehicle was broken open, 13 polythene bags containing cannabis were found to be kept on the rear portion thereof. An addition in the bottom line of document Ex. P-5 goes to show that as the means of weighing of the contraband were not available at the place where the vehicle was lying abandoned, the entire vehicle was shifted to another place known as Shivtrairai. The averments of Ex. P-5 itself is very much doubtful. If the vehicle was found at the particular place i.e. Vindaval Dabripara and the police was sanguine of the fact that the cannabis were loaded, then instead

of taking the entire vehicle to the forest rest house, the weighment measures could have been brought there and weighment should have been made which was much more easier, at the spot itself. It is also doubtful that at the time of preparation of Ex. P-5 without the seizure being made the police authority were sanguine of the fact that the whatever goods were kept inside the vehicle, were cannabis. Therefore at the very inception of the starting point of the crime the prosecution document itself make the things doubtful. Thereafter the documents would show that the vehicle was taken to forest rest house where entire seizure and weighment was carried out.

8. Admittedly, at the time of seizure the accused was not with the vehicle and it was on the statement of the owner of the vehicle namely Rajkumari Shrivastava, the driver Salendra Saket was made an accused. The affidavit of Rajkumari Shrivastava has been marked as article 6. It is also marked as Ex. P-21. At para 3 of the said affidavit it is stated that when the vehicle was taken away by Salendra Saket - the accused and since he did not hear anything, she called him up on his mobile which was not replied as such. She made a report on 06.06.2012 at police station Chorhatti. Thereafter the police made an inquiry and during inquiry driver Salendra Saket told that the vehicle was taken by Chotu Saket on 09.06.2012. Therefore, as per the statement of the owner also who was in the possession of the vehicle it is doubtful whether it was Salendra Saket or Chotu Saket who was driving the vehicle. It was all on the presumption the charge-sheet was filed against the present accused/respondent. Without going into those facts as to whether the goods seized was cannabis or not. As per Section 20 (B) of the NDPS Act 1985, to establish the inculpability

of the accused, the possession of the contraband with accused has to be shown and established by the prosecution. There cannot any presumptive value of drawing an inference that the accused might have been in the possession of the said cannabis.

9. In the circumstances, after conscious examination of all the evidence, we are of the opinion that the learned Court below has not committed any illegality or infirmity in acquitting the accused. Consequently, we do not find any reason to allow this petition and grant leave to appeal. In the result, the CRMP is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge