HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(THROUGH VIRTUAL MODE)

Crl LP (D) 02/2020

Reserved on 05.12.2020
Pronounced on 15 .12.2020

Union of India, Narcotics Control Bureau Applicant(s)

Through :- Mr.Vishal Sharma ASGI

V/s

Rafi Ahmed Non-applicant(s)

Through : None

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

SANJAY DHAR, J.

1 Through the medium of instant application, the applicant-Narcotics Control Bureau (NCB) seeks leave to file appeal against the judgment dated 11.11.2019 passed by the learned Principal Sessions Judge, Kathua (hereinafter referred to as the 'Special Court') whereby the non-applicant Rafi Ahmed has been acquitted of the charges for commission of offences under Sections 8/21/27/28 of NDPS Act, 1985.

2 In brief, the case of the prosecution is that on 31.08.2016, on the basis of a secret information received by the Intelligence Officer of NCB, a team of NCB started checking the vehicles that were proceeding from Punjab towards Lakhanpur Check Post. During the checking of a Bus, co-accused Irshad Ahmed Shera was apprehended and 130 bottles of Rexcough and 159 bottles

of Cought Rex Syrup were recovered from him. It is the further case of the prosecution that the afore-named accused failed to produce any permission or documents authorizing him to carry the aforesaid drugs and upon enquiry, he made a voluntary statement under Section 67 of NDPS Act, stating that he had purchased the aforesaid drugs from the medical shop of accused Rafi Ahmed, the non-applicant herein, for a sum of Rs.26,000/-.

3 During investigation of the case, the recovered drugs were seized, their samples were taken, the same were sealed and sent for examination to FSL. As per the report of FSL, the samples of the recovered drugs were found to contain codeine phosphate which is an opium derivative as defined in Section 2xvi(c) of NDPS Act. The statements of witnesses were recorded and the confessional statements of co-accused Irshad Ahmed and accused Rafi Ahmed, non-applicant herein under Section 67 of NDPS Act were also recorded.

4 After completion of investigation of the case, a complaint was lodged before the Special Court alleging commission of offences under Sections 8/21/27/28 of NDPS Act. The accused were charged for the aforesaid offences. They pleaded not guilty to the charges and, as such, the complainant-NCB was directed to lead evidence in support of its case. As many as six witnesses came to be examined by the complainant. The accused did not enter their defence and, as such, the case was set down for hearing. After hearing the parties, the learned Special Court passed the impugned judgment convicting accused Irshad Ahmed for offences punishable under Sections 21(c) of NDPS Act, while acquitting the accused/non-applicant Rafi Ahmed of all the charges.

5 The applicant-NCB has challenged the impugned judgment to the extent of acquittal of non-applicant Rafi Ahmed on the ground that the learned Special Court has, while acquitting the non-applicant herein discarded the statement of the accused Irshad Ahmed recorded under Section 67 of NDPS Act. The

applicant has submitted that the said statement was made by the accused voluntarily and the same stood corroborated by the proof of recovery of contraband/drugs from his possession. Thus, the learned Special Judge has landed himself into error by disbelieving the said statement.

6 We have heard learned counsel for the applicant-NCB and perused the grounds of appeal and the impugned judgment including the other material on record.

7 From the perusal of material on record, it is revealed that the only evidence against the non-applicant is the statement of accused Irshad Ahmed recorded under Section 67 of NDPS Act in which he is stated to have admitted that he had purchased the recovered drugs from the non-applicant herein. The leaned Special Court has noted that the statement recorded under Section 67 of NDPS Act without corroboration is sufficient to convict an accused, but for that, the Court has to be satisfied about its voluntary nature. The learned Special Court further, on the basis of evidence on record, particularly the fact that the statement was made by the accused subsequent to his arrest, came to the conclusion that the said statement has not been made voluntarily by the accused. The conclusion drawn by the learned Special Court in this regard is well founded and does not deserve to be interfered with. Even otherwise, recently a three Judge Bench of the Supreme Court has, in the case of **Toofan Singh vs. The State of Tamil Nadu (Cr. Appeal No. 152/2013, decided on 29th October, 2020),** after discussing and considering all the previous judgments on the subject, concluded as under:

> *"We answer the reference by stating:*
>
> *(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning*

of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act".

8 In the face of aforesaid position of the law regarding the evidentiary value of a statement recorded under Section 67 of NDPS Act, the non-applicant cannot be convicted on the statement of co-accused Irshad Ahmed recorded under Section 67 of the NDPS Act, as the same cannot be used as a confessional statement being barred under the provision of Section 25 of the Evidence Act.

9 In the aforesaid circumstances, the learned Special Court has rightly acquitted the non-applicant of the charges leveled against him. The law does not allow the State to file an appeal against an order of acquittal under Section 417 Cr.P.C. The State has to seek leave to file an appeal.

10 In the instant case, we do not find any ground to interfere with the order of acquittal passed by the learned Special Court. The present application seeking leave to file an appeal against an order of acquittal is without any merit. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

(Rajesh Bindal)
Judge

Jammu
15.12.2020
Sanjeev

Whether order is speaking: Yes
Whether order is reportable:Yes/No

SANJEEV KUMAR UPPAL
2020.12.15 13:12
I attest to the accuracy and
integrity of this document