

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1898 of 2000

State of Madhya Pradesh (now Chhattisgarh) through Station House Officer Jagdalpur, District Jagdalpur

---- Appellant

versus

1. Om Prakash, S/o Radhe Kanth, aged about 46 years, R/o Jagdalpur ---
Dead, Vide order dated 3.10.2019, this appeal is abated against him
2. Shri Ram, S/o Bhagwandas, aged 36 years
3. Vijay @ Rajesh, S/o Bhaiyalal, aged 31 years, R/o Dimser, P.S. Damoh, District Damoh

--- Respondents

For Appellant/State : Shri H.S. Ahluwalia, Dy. Advocate General
For Respondents No.2 and 3 : Shri Shishir Dixit, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

5.3.2021

1. During pendency of this appeal, Respondent No.1, Om Prakash died. Vide order of this Court dated 3.10.2019, the instant appeal is abated against him.
2. This appeal has been preferred by the State against judgment dated 15.1.2000 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act (henceforth 'the NDPS Act'), Bastar at Jagdalpur in Special Case No.26 of 1999, whereby the Special Judge acquitted the Respondents of the charge framed against them under Section 20(b) of the NDPS Act.
3. Facts of the case, in short, are that on 8.3.1999, along with his staff, Jivan Bhalekar (PW6), Town Inspector was on patrolling duty. When he reached the Toll Tax Naka (Barrier), a jeep bearing

registration No.MP 25 B 0964, seeing the police party, was driven away. The jeep was stopped. In the jeep, the Respondents were found sitting. The jeep was being driven by Respondent No.1, Om Prakash. On search, from the possession of Respondent No.1, Om Prakash 5 bags containing 48 Kgs. of Ganja, from the possession of Respondent No.2, Shri Ram 6 bags containing 52 Kgs. of Ganja and from the possession of Respondent No.3, Vijay 6 bags containing 37 Kgs. of contraband article Ganja was recovered. Samples of 30-30 Grams of Ganja were prepared from each of the recovered bags. The bags and the samples were sealed on the spot. Other formalities were completed. Dehati Nalishi was recorded. On return to the police station, the seized articles were deposited in the Malkhana. First Information Report was registered. Information of the complete action taken was sent to the higher officer. The sample packets were sent to the Forensic Science Laboratory. The FSL Report is positive. A charge-sheet was filed against the Respondents. The Trial Court framed charges against them.

4. To bring home the offence, the prosecution examined as many as 6 witnesses. Statements of the Respondents were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
5. On completion of the trial, as mentioned in 2nd paragraph of this judgment, the Trial Court acquitted the Respondents of the charge framed against them on the ground that the prosecution failed to

comply with the mandatory provisions of Sections 42, 50 and 57 of the NDPS Act. The acquittal is also based on the ground that the seized contraband article and the sample packets were kept in safe custody is not established, the sample packets were sent to the FSL belatedly and during this period the sample packets were kept in which place, the prosecution has not been able to establish this fact. Hence, this appeal by the State.

6. I have heard Learned Counsel appearing for the parties and perused the entire material available on record with due care.
7. Since it was the search of a vehicle and not of person/Respondents, Section 50 of the NDPS Act is not attracted to the case. From perusal of the record and the exhibited documents of the prosecution, it also appears that in compliance with the provisions of Section 57 of the NDPS Act, no document has been placed on record. Since the provisions of Section 57 of the NDPS Act are not mandatory, non-compliance of the said provisions does not leave adverse effect. With regard to non-compliance of the provisions of Section 42 of the NDPS Act, though no document was prepared by the prosecution, from perusal of the evidence on record it appears that when Jivan Bhalekar (PW6), Town Inspector was on patrolling duty, the Respondents, having seen the police party, started running away and then the vehicle of the Respondents was stopped. It appears that Jivan Bhalekar (PW6), Town Inspector had no previous intimation and suddenly the vehicle was seen, stopped and searched. Therefore, in the circumstances, the provisions of Section 42 of the NDPS Act are

not required to be complied with and were not possible too to be complied with. Therefore, from the non-compliance of the provisions of Section 42 of the NDPS Act, the case of the prosecution does not get affected. Diwakar Upadhyay (PW5), Malkhana Moharrir deposed that on 8.3.1999 the seized property was kept by him in the Malkhana and he had made relevant entry in Column No.35 of the Malkhana Register. But, he categorically admitted the fact that sample packets were not given to him along with other material for keeping in the Malkhana. According to the statement of Jivan Bhalekar (PW6), Town Inspector, the sample packets were sent to the FSL for chemical examination vide Ex.P27. But, the sample packets were sent with whom and when have not been stated by this witness. In paragraph 23 of cross-examination, this witness deposed that the sample packets were sent to the FSL with Sub-Inspector Kailash Bhardwaj (PW4), Investigating Officer of the case. But, Kailash Bhardwaj (PW4) has not stated in his deposition in this regard. In paragraph 30, Jivan Bhalekar (PW6) stated that the covering memo with which the sample packets were sent to the FSL does not contain mentioning that which Constable took the sample packets to the FSL. This witness further stated that on 10.3.1999 the sample packets were sent to the FSL and the said sample packets were received in the FSL on 19.3.1999. Where were the sample packets between the period 10.3.1999 and 19.3.1999, nothing has been stated by this witness in this regard. From the evidence on record, it is established that there is no entry available to show that the sample packets were kept in the Malkhana. Furthermore, from where,

when and who took the sample packets to the FSL are not established. Between the period 10.3.1999 and 19.3.1999, the sample packets were kept where and in which condition are also not established. The sample packets, which were prepared on the spot, were itself sent to the FSL and the sample packets prepared on the spot itself were examined by the FSL are also not established. Hence, the Trial Court has rightly acquitted the Respondents.

8. Consequently, I do not find any merit in the instant appeal. The appeal is, therefore, dismissed.

Sd/-

(Arvind Singh Chandel)
JUDGE