

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 570 of 2021**

- State Of Chhattisgarh Through Station House Officer, Police Station Dornapal, District : Sukma, Chhattisgarh

---- Petitioner**Versus**

1. V. Premsingh S/o Babu Jadhav Aged About 24 Years R/o Village Irakpalli, Post Tahsil Nagalgiddha, Police Station Nagalgiddha, District Sangareddi Telangana.
2. E. Sudhakar S/o Pandri Aged About 32 Years R/o Village Yelgoi, Post Tahsil Manoor, Police Station Manoor, District Sangareddy, Telangana.
3. Banoth Prakash S/o Baddu Nayak Aged About 29 Years R/o Village Vasar, Post Tahsil Kangati, Police Station Kangati, District Sangareddy Telangana.

--- Respondents

For Petitioner/State : Mr. Lalit Jangde, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****24/06/2021**

1. Heard on prayer for grant of leave to appeal.
2. Learned State counsel would argue that the learned trial Court has raised doubt and given benefit of doubt to the accused, by giving undue weightage to the minor discrepancy in the case of the prosecution whereas in the present case, the investigating officer has proved seizure of the contraband in the presence of independent prosecution witnesses who have also supported seizure. He would next submit that a minor discrepancy in compliance of Section 42(2) of the NDPS Act had been made a basis. It is next submitted that as far as sample seal in Ex.P-19 is concerned, there is some discrepancy but there was a seal affixed on the sample and no broken seal found. He would further submit that though there is no specific oral evidence regarding the person who had taken away the sample from the Police Station, Malkhana to the FSL office, the documentary evidence sent from the FSL office clearly shows that the sample reached the FSL and it was duly tested. He would next submit that the provisions of Section 57 of the NDPS Act are not mandatory and but only directory in nature. Lastly, it is submitted that the statement of constable Satyanand (PW-9) could not be made a basis to doubt the case of

the prosecution because the Investigating Officer Amit Singh (PW-10) clearly deposed regarding seizure of the articles and its weighment which fact is supported by independent witnesses.

3. We find that the learned trial Court has acquitted the accused giving him benefit of doubt not only on one discrepancy but more than one. These discrepancies are not minor in nature but very material. At the first place, doubt with regard to seizure and weighment has been raised by the learned trial Court, taking into consideration that none other than its officer Satyanand (PW-9) has not supported prosecution story with regard to seizure and weighment of contraband. Similarly, the proceedings with regard to giving of notice under Section 42 (2) of NDPS Act had been doubted because there is hardly three minutes gap in recording information in *Rojnamcha Sanha* and giving information in the office of the SDOP. Moreover, the learned trial Court has also taken into consideration that the *Mukhbir Suchna Panchnama* had been prepared at 8:20 a.m. which is subsequent to recording of *Rojnamcha Sanha* and sending of information under Section 42(2) of the NDPS Act to the higher office. The learned trial Court has also taken into consideration that there is no oral evidence with regard to safe custody of the seized articles in the Malkhana as there is no mention about the crime number, police station and the accused in respect of which, such entrustment was made. There is also no mention of deposit of the contraband and sample in sealed condition. Learned trial Court has also found that the sample sealed in Panchnama Ex. P-19 is not of the concerned police station whose officer is said to have effected seizure but of the office of SDOP, DPL CGP which was not the concerned office involved in the process of seizure and sealing. Learned trial Court found that there is no oral evidence as to when and in what manner and by whom, the sample allegedly kept in the Malkhana, were removed and taken to FSL. Lastly, the learned trial Court found that provisions of Section 57 of the NDPS Act has also not been followed.

4. True, it is that provisions of Section 57 of the NDPS Act are not mandatory but directory but taking into consideration the cumulative effect of number of discrepancies which have been found by learned trial Court and in the absence of any material before us that such findings are factually incorrect, we find that the learned trial Court has not committed any patent illegality or perversity in reaching upon conclusion that the prosecution case has become doubtful. The law provides for stringent punishment upon proof of commission of offence of being possessed of narcotics in commercial quantity and minimum sentence of 10 years has been provided.

5. In that view of the matter, the prosecution was required to prove its case beyond reasonable doubt. The cumulative effect of various discrepancies which has been taken into consideration by the learned trial Court are in accordance with principles laid down by the Hon'ble Supreme Court in the case of **Noor Aga Vs. State of Punjab & anr., (2008) 16 SCC 417**, we are also unable to hold that while arriving at conclusion, the learned trial Court has failed to apply settled principles with regard to appreciation of evidence.
6. In the result, we do not consider present to be a fit case for grant of leave to appeal. Therefore, the application is rejected.
7. The CRMP is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge