CGHC010005352008 2026:CGHC:46990

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No.889 of 2008**

**Reserved on 06.10.2026**

**Pronounced on 05.11.2026**

Israiel @ Gotu, S/o Late Shri Rajjak Mohammad, aged about 35 years, R/o Musalmanpara, Khamhariya, PS Khamhariya, Tahsil-Saja, District Durg (CG) **... Appellant**

**versus**

State Of Chhattisgarh through District Magisgrate, Durg, District Durg (CG) **... Respondent**

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| For Appellant | : | Shri Praveen Kumar Sharma, Advocate through Legal Aid. |
| For Respondent/State | : | Shri Saumya Rai and Smt Anusha Naik, Dy. G.A. |

**Hon'ble Shri Sudhir Kumar, Judge**
**CAV Judgment**

1. This Appeal is directed against the judgment of conviction and order of sentence dated 30.09.2008 passed by the

SISTLA NEELIMA VISHNU PRIYA

Digitally signed by SISTLA NEELIMA VISHNU PRIYA

Special Judge (N.D.P.S. Act), Durg (C.G.) in N.D.P.S. Special Case No.06/2008, whereby the Appellant has been convicted under Section 20(b)(ii)(C) of the NDPS Act and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, the Appellant was further sentenced to undergo two years of additional RI.

2. The brief facts of the case are that on 10.02.2008, the Crime Branch Officer i.e. Inspector Dhruv Kumar Markandey, while proceeding along with the police staff for detection of offences within the jurisdiction of Police Station Khamhariya, received secret information through an informer that the present Appellant had kept illegal ganja in four gunny bags on the roof of his under-construction house situated at Muslimpara, Khamhariya, for the purpose of sale. The said information was reduced into writing and forwarded to the SDOP, Bemetara. Thereafter, the police party along with the witnesses reached the house of the Appellant and after informing him of the information received and his right to have the search conducted before a Magistrate or a Gazetted Officer, his consent for search was obtained. Upon search, four gunny bags containing ganja wrapped in plastic sheets were

allegedly recovered from the roof of the house. The recovered ganja was weighed and its total weight was found to be 40 kilograms, i.e., 10 kilograms in each bag. From each bag, a sample of 100-100 grams was drawn and the remaining ganja was marked as A, B, C and D, while the sample packets were marked as A-1, B-1, C-1 and D-1. The samples and the remaining ganja were separately sealed and seized vide seizure memo (Ex.P-10). Notice under Section 50 of the NDPS Act (Ex.P-12) was served upon the Appellant, who endorsed thereon that he had no licence. The spot map (Ex.P-14) was prepared in the presence of the witnesses and the Appellant was arrested vide arrest memo (Ex.P-16). Dehati Nalishi (Ex.P-23) was prepared and as the place of occurrence fell within the jurisdiction of Police Station Khamhariya, the seized articles, Appellant and documents were sent to the said Police Station. On the basis of the Dehati Nalishi, the First Information Report (Ex.P-22) was registered by the Station House Officer, Police Station Khamhariya. The seized articles and sample packets were deposited in sealed condition in the *malkhana*. A copy of the *malkhana* register (Ex.P-21C) was obtained. The statements of the witnesses were recorded. The sample

packets were thereafter sent to FSL, Raipur on 26.02.2008 for chemical examination through Constable Trannidhi. The FSL report (Ex.P-24) confirmed that the samples sent for examination were ganja.

3. After completion of investigation, charge-sheet was filed against the present Appellant. During trial, the Appellant abjured the guilt and claimed to be tried. In order to prove its case, the prosecution examined as many as 10 witnesses and exhibited 26 documents. Statement of the Appellant was also recorded under Section 313 of the Cr.P.C., in which he denied the allegations levelled against him and pleaded innocence and false implication.

4. After evaluating the evidence available on record, the learned trial Court, vide its impugned judgment, convicted the Appellant under Section 20(b)(ii)(C) of the NDPS Act and sentenced him as mentioned above.

5. Learned Counsel for the Appellant submits that the prosecution case is not corroborated by any independent witness. It is contended that the mandatory provisions of Section 52A of the NDPS Act have not been complied with. He further submits that the samples were not properly drawn and were not kept in safe custody. It is further contended that the alleged ganja was seized from an

under-construction building, but the prosecution has failed to establish that the said House (under-construction building) was exclusively in the possession and control of the Appellant. On the basis of the aforesaid submissions, a prayer has been made for acquittal of the Appellant.

6. Contrarily, learned State Counsel submit that the Investigating Officer has duly followed the prescribed procedure and the trial Court has rightly convicted and sentenced the Appellant and therefore, the Appeal is liable to be dismissed.

7. I have heard the rival submissions and perused the record as also the impugned judgment with utmost circumspection.

8. It is true that the prosecution case, in the present matter, is not supported by any independent witnesses. However, the legal position is well settled that in a prosecution under the NDPS Act, the mere absence of corroboration by independent witnesses does not, by itself, render the prosecution case doubtful. In such circumstances, the testimony of police witnesses assumes significance and where the procedure prescribed under the law has been duly followed and their testimony is found to be reliable

and trustworthy, a conviction can be sustained on the basis of their testimony alone.

9. In the present case, it is evident that the provisions of Section 52A of the NDPS Act have not been complied with. In this regard, learned Counsel for the Appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of *Yusuf @ Asif v. State* reported in **(2024) 14 SCC 217.** He further relied upon the matter of *Abdul Rajik v. State of Madhya Pradesh* reported in **2026 INSC 100.**

10. However, in the matter of *Bharat Aambale v. State of Chhattisgarh* reported in **(2025) 8 SCC 452,** the Hon'ble Supreme Court has held that mere non-compliance of the provisions of Section 52A of the NDPS Act cannot, by itself, constitute a ground for acquittal of the accused and while setting aside the order of conviction, the Court is required to look for something more than just a mere compliance of the procedure under Section 52A that renders the case of the prosecution doubtful. The following has been observed at paras 25, 26 and 27:-

> "**25. From the above exposition of law, it is clear that the underlying object behind Section 52-A of the NDPS Act and the Standing Order(s)/Rules thereunder is only to provide for a mechanism and procedure for the safe and early disposal of narcotics substances and seized contraband to prevent such substances from endangering lives due to prolonged storage, ceasing to be of any**

> **evidentiary value due to degradation or spoilage, or from falling into wrong hands or being recirculated into the market due to theft, etc.**
> **26. Although it is true that Chapter V of the NDPS Act more particularly, Section(s) 42 to 57 form a unique scheme of provisions that prescribe several procedural safeguards and conditions that have to be mandatorily adhered to, right from the process of conducting search till the seizure and recovery of the contraband, its safe-keep and handling, yet it does not mean that a mere delay or non-compliance of the same, would result in the trial being vitiated, or the entire case of the prosecution crumbling.**
>
> **27. What is discernible from the various decisions referred to by us, is that mere non-compliance of the procedure under Section 52-A or the Standing Order(s)/Rules thereunder will not by itself render the trial vitiated or into an automatic acquittal. In all instances where this Court set aside the order of conviction, it did so not solely for the reason that there was a violation of Section 52-A but because of and on the strength of the other discrepancies or shortcomings in the prosecution's case that rendered it doubtful. In *Jarooparam* [*Union of India* v. *Jarooparam*, (2018) 4 SCC 334 : (2018) 2 SCC (Cri) 465] the order of acquittal had been upheld as the independent witnesses had also turned hostile and not supported the case of the prosecution. Similarly, in *Mangilal* [*Mangilal* v. *State of M.P.*, (2023) 19 SCC 364] aside from the non-compliance of Section 52-A, the order of conviction was held unsustainable as some of the witnesses to the seizure either turned hostile or were not examined at all and due to discrepancies in the very case of the prosecution. In *Mohd. Khalid* [*Mohd. Khalid* v. *State of Telangana*, (2024) 5 SCC 393 : (2024) 2 SCC (Cri) 650] also, the conviction was set aside as the FSL report was found to be very doubtful and in complete contradiction of the seizure that had taken place. Thus, this Court whilst setting aside the order of conviction has consistently looked for something more than just a mere non-compliance of the procedure under Section 52-A that renders the case of the prosecution doubtful."**

11. Now, the question arises for consideration before this Court is that whether in the present case, sampling has been done properly and that the samples were properly sent for chemical examination or not.

12. In this regard, Dhruv Kumar Markande (PW-9), the investigating officer has stated that the samples were drawn from the seized contraband and they were separately sealed. Ishwar Lal (PW-7) has stated that on 10.02.2008, in respect of Crime No.13/08 registered at PS Khamariya, the samples drawn from seized contraband were handed over to him by the concerned in-charge Police Station for being deposited in the *malkhana.* This witness has further stated that the said packets of sample were sent for chemical examination to the FSL, Raipur on 26.02.2008 through the constable Trannidhi. However, the prosecution has not recorded any statement of Constable Trannidhi in respect of the samples sent to the FSL, Raipur for examination. According to the FSL report (Ex.P-24), constable Trannidhi has produced the said samples for chemical examination to the State Forensic Science Laboratory on 15.02.2008. Thus, there is contradiction as to on which date, the said samples were taken out from *malkhana* and when they were sent for chemical examination to FSL, Raipur. Neither any explanation in this regard has been offered by the investigating officer nor any statement of the Constable who took the sample to the FSL, was recorded. There is a material contradiction in the

evidence regarding the date on which the sample was taken out of the *malkhana* and the date on which it was deposited with the FSL**.** It was contended that the accused was in possession of the contraband ganja, which has not been proved by the prosecution. As per the case of the prosecution, contraband ganja was seized from the roof of under-construction house of the accused. However, no documentary evidence has been led by the prosecution to show that the house under construction belonged to the accused. Dhruv Kumar Markande (PW-9), the investigating officer has stated that during search of the under-construction house of the accused, he recovered plastic bag from the roof of the said house. This witness further stated that there was one shop in the ground floor of the house of the accused and on the upper portion, some construction work was going on. He has further stated that he is not aware of the fact that in the house of the accused, whether his father, brother and uncle were residing together or not. In cross-examination, he has admitted that on the roof of the house, some construction material and garbage were lying. CL Paraste (PW-6), Revenue Inspector has admitted in cross-examination that in the house shown in the map, Rajjak Mohammad was

residing with his family i.e. wife and children, but Rajjak Mohammad is the father of the accused. In view of the above evidence, it has not been proved whether the said house was exclusively in possession and control of the accused.

13. There is material contradiction on the issue of sending the samples from *malkhana* to the concerned FSL for examination. As per the FSL report (Ex.P-24), on 15.02.2008, the samples were received whereas, Ishwarlal (PW-7) has stated that on 26.02.2008, he has handed over the samples to Constable Trannidhi. However, the said constable (Trannidhi) has not been examined by the prosecution. It has also not been proved by the prosecution as to whether the material lying on the roof of under-construction house was exclusively in possession of the accused.

14. In the case at hand, no independent witness has supported the case of the prosecution and compliance of provisions of Section 52A of the NDPS Act has also not been made. True it is that, these grounds cannot be made basis for acquittal, however, considering the fact that the issue of taking the samples from *malkhana* and sending the same to the FSL is under cloud and for the fact that the

subject house from which the alleged contraband has been seized is not proved to be in exclusive possession of the accused/Appellant, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the Appellant beyond reasonable doubt and therefore, the findings recorded by the trial Court convicting the Appellant under Section 20(b)(ii)(C) of the NDPS Act deserves to be set aside.

15. Accordingly, the Appeal is **allowed**. Conviction and sentence imposed upon the Appellant under Section 20(b)(ii)(C) of the NDPS Act are set aside and he is acquitted of the said charge by extending to him the benefit of doubt. The Appellant is reported to be in jail. He be released forthwith unless required to be detained in any other case.

16. A copy of this judgment, along with the trial Court record, be sent to the concerned trial Court as well as the Superintendent of the concerned Jail for information and necessary compliance.

17. Pending applications, if any, shall stand disposed of.

Sd/-

**(Sudhir Kumar)**
**Judge**

Priya