

The State of Madhya Pradesh Vs. Shakir Mohammad @ Babbu Judgement
Given By: Hon'ble Shri Justice N.K. Gupta

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Court : Madhya Pradesh

Decided On : Jan-21-2014

Appellant : The State of Madhya Pradesh

Respondent : Shakir Mohammad @ Babbu Judgement Given By: Hon'ble Shri Justice N.K. Gupta

Judgement :

M.Cr.C.No.1179/2011 21.1.2014 Shri S.D.Khan, G.A for the applicant/State.

Heard on admission.

The State has preferred an application for grant of leave to appeal against the judgment dated 28.10.2010 passed by Special Judge (NDPS) Sidhi in Special Case No.67/2009 whereby the respondent was acquitted from the charge of offence punishable under Section 8 read with Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substances ACT (hereinafter referred to as the NDPS Act).The prosecution's case in short is that on 3.11.2009 A.S.I.Ramdev Urmaliya (PW7).who was posted at Police Station Kamarji, Sidhi received an information that the applicant had some Ganja (cannabis) with him and therefore, after observing the various formalities, he went to the spot and recovered approximately 7.900 kg.

of Ganja (cannabis) from the applicant.

Various memos were prepared and after taking samples from the seized property the remaining seized property as well as the samples were sealed and handed over to the Moharir of the Malkhana of the concerned Police Station and thereafter, sent to the Forensic Science Laboratory where it was found that the sent sample was of Ganja (cannabis).The respondent abjured his guilt.

He did not take any specific plea and therefore, no defence evidence was adduced.

The learned Special Judge after considering the prosecution's evidence acquitted the respondent.

After considering the submissions made by the learned G.A for the State and the evidence adduced before the trial Court, it appears that the independent witness Nandlal Singh (PW5) has turned hostile whereas the remaining witness Ashok Singh was not examined due to his death.

The witness Janki Prasad Gupta (PW1) has also turned hostile for which it was mentioned that he brought the scale and weights to weigh the Ganja (cannabis) seized.

Under such circumstances, it was for the trial Court to assess the testimony of the Investigation Officer A.S.I.Ramdev Urmaliya (PW7).The learned Special Judge has observed so many mistakes committed by A.S.I.Ramdev Urmaliya in the investigation and seizure and therefore, he disbelieved the testimony of A.S.I.Ramdev Urmaliya.

If the observations of the learned Special Judge are considered then those were dependent upon the law laid by Hon'ble the Apex Court in the case of Mausam Singh Rai and others versus State of West Bengal: [(2003) 12 SCC377, in which it was mentioned that if it is a more serious offence then stricter degree of proof is required to convict the accused.

In the present case when it was not sure to Shri Urmaliya that the respondent will be available with Ganja (cannabis).still he called the person to weigh the Ganja (cannabis) from the very beginning.

In the Rojnamcha Ex.P/6, he had called the witness with scales etc.at 2.45 p.m whereas, he left the Police Station after much delay.

Looking to the entries of various Rojnamchas Exs.P/4 to P/12, it appears that such entries were made at a time by manipulating the margin of time otherwise, it was not possible that when A.S.I.Ramdev Urmaliya went to the spot, no case or no intimation was registered in the Rojnamcha.

The entires of the Rojnamcha is shown at Items No.71 to 82 in a continuous manner.

A.S.I.Ramdev Urmaliya did not follow the provisions of the NDPS Act and its rules.

He sent the intimation to the SDOP concerned on the wireless and thereafter, a returned wireless was received, sent by SDOP in the Rojnamcha available in the office.

However, copy of both the wireless messages were not submitted before the trial Court to show the authenticity of that Rojnamcha.

Under such circumstances, it appears that he did not inform the SDOP or did not take the steps for the search warrant.

Also he prepared so many memos on his own.

If the document Ex.P/20 is perused, which is a memo to intimate the respondent about his right of search in which it is mentioned that he was informed about his right that he could give his search to the Magistrate or the Gazetted Officer but, thereafter, it is no where mentioned in the memo as to whether the respondent gave his permission that he could be searched by the investigation officer himself.

No any consent was recorded in that memo given by the respondent.

Simply the signature of the respondent was taken on that memo and therefore, it would be apparent that the A.S.I.Ramdev Urmaliya flouted the provisions of Section 50 of the NDPS Act.

Similarly Shri Urmaliya prepared the documents Ex.P/26 a document for taking sample and sealing the entire property and also the seizure memo Ex.P/27 but in none of these two documents he appended the specimen of the seal by which the property was sealed which indicates that he did not seal the property at the spot and therefore, it cannot be said that the property sent to the Forensic Science Laboratory was the same which was recovered from the respondent.

Under such circumstances, the report of the Forensic Science Laboratory cannot be read in respect of the property alleged to be seized from the respondent.

Under such circumstances, it appears that such a type of a serious matter was given to a lower rank of Police Officer like A.S.I and therefore, he committed so many lapses in recovery of that Ganja (cannabis).Under such circumstances, the testimony of A.S.I Ramdev Urmaliya was not trustworthy, which could not be accepted for such a grave offence and therefore, the learned Special Judge has rightly disbelieved the testimony of Shri Urmaliya on this count.

Under such circumstances, if appeal is admitted for final hearing then it cannot succeed and therefore, it would not be proper to grant leave to file an appeal.

Consequently, the application for grant of leave to appeal is dismissed and leave is refused.

Copy of the order be sent to the trial Court along with the record for information.

(N.K.Gupta) Judge bina

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