

State of Jandk; Vs. Devinder Singh

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Court : Jammu and Kashmir

Decided On : Oct-16-2012

Judge : Hon'ble Mr. Justice Mansoor Ahmad Mir

Appellant : State of Jandk;

Respondent : Devinder Singh

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. Condl (Cr) No. 82 OF 201.AND Cr Acq Appeal No. 112 OF 201.State of J&K Petitioners Devinder Singh Respondent !Ms. Seema Shekhar, AAG ^Mr. Anil Billoria, Advocate Honble Mr. Justice Mansoor Ahmad Mir, Judge. Honble Mr. Justice J.P.Singh, Judge. Date:

16. 10.2012 :

: Condl (Cr) No. 82/2010 : Heard learned counsel for the parties. In view of the reasons detailed in Paragraph Nos. 4 & 6 of the Application we are satisfied that the State has sufficiently explained the circumstances that disabled it from filing Appeal against Judgment and order dated 31.03.2010 of the learned Special Judge Kathua within the prescribed period of limitation. Delay in filing the Appeal is, accordingly, condoned allowing the States Motion. Cr.Acq.Appeal No. 112/2010 : Heard learned counsel for the parties on Motion Hearing. 2 Learned Sessions Judge, Kathua, the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985, recorded respondents acquittal of the Charge under

Sections 15/20 of the NDPS Act, inter alia, finding that the prosecution had failed to explain Investigating Agency's retention with it, the seized samples of Charas and Poppy straw for over a period of one month. It was further found to have failed to prove the production of seized samples before any Magistrate to preserve their identity until examination by the Chemical Examiner. It was additionally found on facts that what was sent to the Chemical Examiner for examination was only 1gm of Charas whereas what was stated to have been preserved during investigation was 1 tola, i.e., 10 gms thereof. The statements of witnesses produced by the prosecution to prove seizure of the contraband from the possession of the respondent too were found unworthy of credence. When asked to explain the delay in sending the seized samples of contraband to the Chemical Examiner, the learned State counsel candidly admitted that there was delay in sending the samples which had not been explained by the prosecution. We have considered the submissions made by learned counsel for the parties and are of the view that the Investigating Agency had failed to comply with the requirements of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 to preserve their identity until their examination by the Chemical Examiner. In view of the above omission of the Investigating Agency, when considered in the light of other shortcomings, noticed by the learned Special Judge in the prosecution case, satisfies us that the view taken by the learned Special Judge in recording respondent's acquittal is certainly a view that could be taken in the facts and circumstances of the case. We, therefore, do not find any ground to have been made out for admission of the Appeal. This Appeal is, accordingly, dismissed. (J.

P. Singh) (Mansoor Ahmad Mir) Judge Judge JAMMU :

16. 10.2012 Pawan Chopra

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