

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 197 of 2004

STATE
V/S
SURENDRA SINGH

Mr. HR SONI, PP, for the State

Date of Order : 31.1.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned Public Prosecutor.

It is contended that the learned trial Court was in error in not recalling the witness for exhibiting the chemical report, and since the acquittal has been recorded only on the ground of want of proof of the chemical report, the impugned order is bad.

I find from the record that the chemical report was produced on record on 12.4.2002, and significantly, the statements of the Excise Inspector, P.W.5, were recorded on that very day, being 12.4.2002 itself. In such circumstances, not getting the report exhibited from the Inspector, was an act of sheer negligence on the part of the Assistant Public Prosecutor, who was posted in the case, and the learned trial Court cannot be said to be in error in declining to recall the witness.

In these circumstances, the State would stand better advised to get rid of such careless Public Prosecutors, and prevents spoiling of trial of criminal cases.

So far as the merits of the impugned order are concerned, in my view, on the face of the language of Section 293 of Cr.P.C., even without the report being marked exhibit, it was admissible evidence, and could be used against the accused. As such, the petition for leave to appeal is allowed. The appellant is granted to leave to appeal against acquittal. It be registered as appeal. The attendance of the respondent be procured by a bailable warrant for a sum of Rs.5000/-. A copy of this order be sent to the Chief Secretary for needful.

(N P GUPTA), J.

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