HIGH COURT OF ORISSA, CUTTACK

GOVERNMENT APPEAL No. 79 OF 1998

From the judgment dated 03.03.1997 passed by Shri D.K.Sahu, Sessions Judge and Judge Special Court, Phulbani in S.T. Case No. 102 of 1996.

State of Orissa ..... Appellant

Versus

Jagabandhu Sahu ..... Respondent

For Appellant : Mr. K.K.Nayak,
Addl. Standing Counsel

For Respondent : Mr. J.Katikia, advocate.

PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 12 .12.2014 : Date of Judgment : 24 .12.2014

The State in this appeal has called in question the order of acquittal dated 03.03.1997 passed by the learned Sessions Judge, Phulbani in S.T. No. 102 of 1996 acquitting the respondent of the charge under section 20(b)(i) of the ND & PS Act 1985.

2. The case of the prosecution in short is that on 11.09.1996 while patrolling, the Sub-inspector of Excise P.W.3 with his other staff, found ganja plaints to have been grown in the backyard of a house. They entered inside and detected three numbers of ganja plaints to have been grown there. Those were uprooted, seized and packed after

drawal of the samples. It is stated that the respondent is the owner in possession of the said piece of land and as such had cultivated those plaints. The samples were then sent for chemical examination. The report in the affirmative was received. So finally the respondent faced the trial.

3. The respondent took the plea of denial and false implication in the case.

Prosecution in order to establish the charge has examined altogether three witnesses. As already stated P.W.3 is the Excise Sub-inspector when P.W.2 is the A.S.I. of Excise and P.W.1 is a neighbour of the respondent. The prosecution has also proved the seizure list Ext.1, chemical examination report Ext.4 and the copy of the sample forwarding letter Ext.3. The record of right in respect of land in question has been admitted in the evidence and marked Ext.6. The respondent has examined none.

4. The trial court on evaluation of evidence led by the prosecution has come to the conclusion that there has been failure on the part of the prosecution to establish the search, recovery and seizure of three ganja plants from the possession of the respondent beyond reasonable doubt and that the respondent had cultivated those seized ganja plants. The trial court has arrived at a conclusion that the factum of possession of said land by this respondent has not been established nor it is there in the evidence that the respondent was in absolute control of the said land. So, ultimately, he has recorded the order of

acquittal of the respondent.

5. Learned counsel for the state submits that on the basis of the evidence coming from the lips of P.Ws. 1 and 3, the trial court ought to have recorded the finding that it is the respondent who had grown the three ganja plaints on the land, which was under his control and possession. It is his further submission that there remains no justification to discard the evidence of the official witnesses simply because of their status as such and even without corroboration from any independent serious when nothing is shown that those witnesses had any reason to falsely implicate the respondent. According to him the trial court ought to have found the respondent guilty of the offence for which he stood charged.

6. Learned counsel for the respondent on the other hand supports the finding of the trial court. It is his submission that the evidence is wholly lacking to attribute the possession or control either direct or indirect over the land in question to the respondent. It is also his submission that there is no evidence that the respondent was taking care of those plaints by doing further work such as watering and caring those plaints. Therefore, he urges that there remains no merit in this appeal.

7. On the above rival submission, this Court is now called upon to scan the prosecution evidence in order to judge the defensibility of the finding of the trial court as stated above. But before taking up that exercise, it is felt apposite to take note of the scope of this appeal and

power of this Court to interfere with an order of acquittal in seisin of an appeal against the same.

It has been held in case of ***Basappa Vrs. State of Karnataka***; (2014) 57 OCR 1044 that the High Court in an appeal under section 378 Cr.P.C. is entitled to reappraise the evidence and put the conclusions drawn by the trial court to test but the same is permissible only if the judgment of the trial court is perverse. Relying the case of ***Gamini Bala Koteswara Rao and others – Vrs. State of Andhra Pradesh***; (2009) 10 SCC 639, it has been held that the word "perverse" in terms as understood in law has been defined to mean 'against weight of evidence'. In '***K. Prakashan Vrs. P.K. Survenderan***; (2008) 1 SCC 258, it has also been held that the Appellate Court should not reverse the acquittal merely because another view is possible on evidence. It has been clarified that if two views are reasonably possible on the very same evidence, it cannot be said that prosecution has proved the case beyond reasonable doubt (Ref.:- ***T. Subramaniam Vrs. State of Tamil Nadu***; (2006) 1 SCC 401). Further, the interference by appellate Court against an order of acquittal is held to be justified only if the view taken by the trial court is one which no reasonable person would in the given circumstances, take (Ref.:- ***Bhima Singh Vrs. State of Haryana;*** (2002) 10 SCC 461).

8. At the outset it may be stated that P.Ws.2 and 3 are the official witnesses. It is stated by P.W.2 that the respondent was in his house. He is not stating as to any other role of the respondent or that he

had been called. He having no personal knowledge about possession of the said land, his evidence that it was grown on the homestead land of the respondent is of no avail. P.W.3 states that the respondent was called being the owner of the house. He has also no personal knowledge about it. The land is said by P.W.1 to have fallen in the share of Sahadev, father of respondent who has another brother. When he states that Sahadev's properties were being looked after by this respondent, in specific term he is snot stating that this respondent was in exclusive possession or control of the land in question or that he was alone looking after cultivation over the land. The record position is not clear on that score. Thus the evidence is not acceptable on the point of cultivation over the land by respondent. In view of that the knowledge of this respondent is not attributable so far as the growth of ganja plaints over the said land is concerned. In such state of affair in the evidence, the trial court thus having concluded that the prosecution has failed to establish beyond reasonable doubt that it is the respondent who had cultivated those three ganja plaints, this court on reappraisal of evidence finds no reason to disagree. In that view of the matter the finding rendered by the trial court is hereby confirmed. Therefore, the ultimate result arrived at in the trial in acquitting the respondent of the charge is not found amenable to interference in this appeal.

9. In the result, the appeal stands dismissed.

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D. Dash, J.

Orissa High Court, Cuttack
Date 24th December,2014/Sukanta.