

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B.Crml Leave To Appeal No. 324 / 2016

APPELLANT:

State of Rajasthan

Versus

ACCUSED-RESPONDENT:

1. Rajesh @ Raju @ Rajeshwar Bhagat Son of Ravi Shanker @ Haribarmen @ Ram Dev Bhagat Chorasiya, Jeetwarpur, P.S. Govindganj, District Champaran East, Motihari, Bihar.
2. Ram Lal Son of Khem Chand b/c Sindhi, Street No. 21 Dhobi Talai, P.S. Kotegate, Bikaner.

For Appellant(s) : Mr. K.K. Rawal, Public Prosecutor.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment

31/01/2017

By way of this application preferred under Section 378(iii) & (i) of the Cr.P.C., the State of Rajasthan craves leave to file an appeal against the judgment dated 02.07.2016 passed by the learned Special Judge, NDPS Act Cases, Bikaner in Sessions Case No.01/2008 acquitting the respondents from the charge under Section 8/20 of the NDPS Act.

Facts in brief are that the SHO, Police Station Bikaner Shri Chandra Prakash Pareek, upon receiving a message from the Control Room, reached the Urmul Circle and conducted a nakabandi. At about 02.30 in the afternoon, two suspects were seen coming towards circle holding a bag in their hands. Both the

persons were stopped and upon an inquiry, gave out their names as Rajesh @ Raju @ Rajeshwar and Ramlal. They further divulged that ganja was concealed in the bag held by them. Upon this, the bag was searched and weighed in presence of independent motbirs and it was found that the suspects were carrying 12 Kg. 180 Gm. Ganja concealed in the bag. Two samples of 250 gm. each were taken out from the contraband and sealing procedure was carried out. The accused were arrested at the spot. The contraband was seized. The accused and the seized articles were brought to the police station Sadar, Bikaner where, FIR No.27/2008 was registered for the offence under Section 8/20 of the NDPS Act against both the accused. Further investigation was handed over to Dileep Assistant Sub-Inspector. One of the samples taken out from the contraband was forwarded to the FSL from where, a report was received that the same tested positive for Ganja. A charge-sheet came to be filed against both the accused for the offence under Section 8/20 of the NDPS Act. The trial court took cognizance and framed charges against the respondent accused for the said offence. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 12 witnesses in support of its case and exhibited 20 documents. The FSL report was marked as Ex.C/1. Upon being examined under Section 313 Cr.P.C., the accused claimed to be innocent and prayed for acquittal. However, they did not lead evidence in defence. The trial court, upon conclusion of the trial, proceeded to hold that the prosecution evidence was vacillating and shaky. The requirements of Sections 52A and 55 of the NDPS Act were not

adhered to by the prosecuting agency. The C.I. Chandra Prakash Pareek acted in an illegal fashion while handing over the investigation to his subordinate Dileep, ASI. The independent witnesses were stock witnesses and their evidence was not reliable. Proper procedure of resealing as required under Section 55 of the NDPS Act was not followed. Link evidence led by the prosecution regarding the safe custody of the sample right from seizure till it reached to the FSL was not trustworthy. The seized contraband was not exhibited in the Court nor was any memo prepared under Section 52A of the NDPS and exhibited and thus, the evidence of seizure became doubtful. Thereupon, the accused were acquitted by giving them the benefit of doubt vide the impugned Judgment dated 02.07.2016, feeling aggrieved whereby the State has approached this Court under Section 3(iii)(i) Cr.P.C. praying for grant of leave to appeal.

Learned Public Prosecutor vehemently urged that the trial court committed gross factual and legal errors while acquitting the accused of the charges. The prosecution gave clinching evidence regarding seizure of huge quantity of Ganja weighing in excess of 12 Kgs. from the possession of the accused. Technical shortcomings noticed by the trial court for acquitting the accused were not so grave so that the entire prosecution case could be discarded. He thus urged that it is a fit case wherein the State should be granted leave to file an appeal against the impugned judgment.

I have heard the arguments advanced by the learned Public Prosecutor and have gone through the material available on

record.

The trial court noticed the above mentioned shortcomings in the prosecution story and thereupon proceeded to acquit the respondents accused from the charges. In the opinion of this Court, non-exhibiting of the Muddamaal in the Court is a fatal infirmity in a prosecution instituted under the provisions of the NDPS Act. Failure to do so, leads to an inference that the prosecution could not give primary evidence of the seizure.

In the opinion of this Court, only the single ground of non-exhibiting the Muddamal in the court was sufficient to hold that the prosecution could not prove the case beyond reasonable doubt. There is a catena of judgments to support this preposition, a few of which are being noted hereinbelow:-

- (1) *Aladdin & Anr. vs. State of Rajasthan, (S.B. Criminal Appeal No.1050/2015) decided on 19.02.2015.***
- (2) *Bhagirath Ram Vs. State of Rajasthan reported in 2014(1) Cr.L.R. (Raj.)-117***

In this background, this Court is of the opinion that the trial court was perfectly justified in acquitting the accused from the charge under Section 8/20 of the NDPS Act and the impugned judgment does not suffer from any shortcomings, either factual or legal, so as to call for interference.

Thus, the application for leave to appeal being devoid of any merit is hereby rejected.

Record be returned to the trial court.

(SANDEEP MEHTA)J.