



NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**ACQA No. 361 of 2010**

**Judgment Reserved on 05.05.2025**

**Judgment Delivered on 09.05.2025**

- State of Chhattisgarh, Through the District Magistrate Jagdalpur, District Bastar, C.G.

**...Appellant**

**versus**

- Vinati Bai, W/o Banshi Mahara, aged about 36 Years, Occpation Labour, R/o Kotpad, Mirganpara, P.S. Kotpad, District-Koraput (Orissa)

**... Respondent**

For Appellant	:	Ms. Smita Jha, Panel Lawyer.
For Respondent	:	Ms. Sareena Khan, Advocate.

**Hon'ble Shri Justice Sanjay S. Agrawal &  
Hon'ble Shri Justice Radhakishan Agrawal  
CAV Judgment**

**Per Radhakishan Agrawal, J.**

1. This acquittal appeal filed by the Appellant/State arises out of the judgment dated 13.08.2008 passed by the Special Judge under NDPS Act, Jagdalpur, C.G. in Special NDPS Case No.32/2007, whereby the learned trial Court acquitted the accused/respondent herein of the charge under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act').
2. Case of the prosecution, in brief, is that on 13.04.2007 at about 20:30 hours, PW-7 Rahul Bhagat, Station In-charge, Nagarnar, received a secret information from the informant that an unknown woman wearing a

pink saree and a yellow-coloured blouse is standing at Nagarnar Chowk having bags containing illegal contraband. Thereafter, he reduced the information in *Roznamcha Sanha* vide Ex.P-2, called the witnesses and gave information to his Superior Officer and after that, he along with witnesses and staff rushed to the spot as stated by the informer. After reaching the place of incident, they stopped the said woman and told her about the information received from informer. In compliance of Section 50 of NDPS Act, a notice vide (Ex.P-9) was given to the respondent. Thereafter, personal search of the police party and the witnesses was also made by the respondent. As per the consent of the respondent, Police team searched the respondent and the bags which she was carrying and upon search, they found *ganja* like substance vide Ex.P-13. Thereafter, *Samras* panchnama was prepared vide Ex.P-17, four sample packets each 25-25 gms of seized articles were also prepared vide Ex.P-18 and following the provisions of law, *ganja* was weighed and weighing *panchanama* was prepared vide Ex.P.16 and upon weighment, total *ganja* of 27.5 kg was found. Vide Ex.P-20, 15 kg *ganja* in black colour rexine bag, 12 kg 500 gms *ganja* in white-blue colour bag, total 27 kg 500 gms and 4 sample packets each 25-25 gms were seized. Thereafter, the said articles were sealed and specimen sample seal *panchnama* was prepared vide Ex.P-19. Spot map was prepared vide Ex.P-22. Accused/respondent was taken into custody vide Ex.P-21 and seized articles were deposited in *Malkhana*. After completion of proceedings, FIR vide Ex.P-24 was lodged against the respondent. Seized samples packets were sent to FSL for chemical examination and as per FSL report (Ex.P-1), the recovered substance was found to be *ganja*.

3. After completion of investigation, charge sheet was filed against the accused/respondent before the Special Judge under NDPS Act. The respondent abjured the guilt and entered into defence.
4. In order to bring home the offence, the prosecution examined as many as 7 witnesses and exhibited 30 documents in support of case of the prosecution. In her defence, the respondent has examined none and not exhibited any documents.
5. The learned trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment acquitted the accused/respondent herein of said charge leveled against him.
6. Learned counsel for the appellant/State would submit that the trial Court is unjustified in acquitting the accused/respondent herein of said charge by recording perverse findings. She would further submit that there is cogent and clinching evidence available on record to connect the accused/respondent with the offence alleged against her. She would also submit that mandatory provisions of NDPS Act have been complied with by the prosecution and despite that, the learned trial Court has committed grave error in acquitting the accused/respondent without appreciating the evidence on record in its correct perspective. Thus, the impugned judgment of acquittal suffers from perversity and illegality, therefore, the same is liable to be set aside.
7. On the other hand, learned counsel for the respondent/accused would support the impugned judgment and submit that there are material contradictions and omissions in the statement of PW-1 Rahul Bhagat, Investigating Officer and his statement does not corroborate with the

other witnesses' evidence. She would further submit that seizure witnesses in this case namely PW-3 Hafiz Khan and PW-5 Budhram, being a stock witnesses of police, have not supported the prosecution case. She would also submit that the trial Court, after appreciating the evidence available on record and material documents, has rightly come to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt to connect the respondent with the crime in question which resulted into her acquittal. Therefore, the appeal is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the material available on record.
9. The Supreme Court in the matter of *Jafarudheen and others vs. State of Kerala* reported in (2022) 8 SCC 440 has considered the scope of interference in Appeal against acquittal, which reads as under:-

25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be terms as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

10. As regards the involvement of the respondent in the crime in question, the evidence of PW-1 Rahul Bhagat/Station In-charge, is very significant. He has deposed that on 13.04.2007 at about 20:30 hours, he received a secret information from the informer that an unknown woman wearing a pink saree and a yellow-coloured blouse is standing at Nagarnar Chowk having two bags. After reducing the same in *Roznamcha Sanha* vide

Ex.P-2, he called the witnesses and gave information to his Superior Officer and after that, he along with witnesses and staff rushed to the spot and stopped the said woman and told her about the information received from informer. In compliance of Section 50 of NDPS Act, a notice vide (Ex.P-9) was given to the respondent. Thereafter, personal search of the police party and the witnesses was also made. As per the consent of the respondent, Police team searched the respondent and the bags which she was carrying and upon search, they found ganja like substance vide Ex.P-13. Thereafter, Samras panchnama was prepared vide Ex.P-17, four sample packets each 25-25 gms of seized alleged articles were also prepared vide Ex.P-18 and following the provisions of law, *ganja* was weighed and weighing panchnama was prepared vide Ex.P.16 and upon weighment, total ganja of 27.5 kg was found. Vide Ex.P-20, 15 kg *ganja* in black colour rexine bag, 12 kg 500 gms *ganja* in white-blue colour bag, total 27 kg 500 gms and 4 sample packets of alleged seized articles each 25-25 gms were seized. Thereafter, the said articles were sealed and specimen sample seal *panchnama* was prepared vide Ex.P-19. Spot map was prepared vide Ex.P-22. Accused/respondent was taken into custody vide Ex.P-21 and seized articles were deposited in *Malkhana*. After completion of proceedings, he lodged FIR vide Ex.P-24 against the respondent and also conducted the other proceedings. Seized samples packets were sent to FSL for chemical examination and as per FSL report (Ex.P-1), the recovered substance was found to be *ganja*. Although this PW-1 Rahul Bhagat, in his statement, has stated that after giving notice under Section 50 of the NDPS Act, the accused and her bags were searched by PW-7 Gauriti Tirkey, Lady Constable, but in Ex.P-10 *panchnama* regarding search of a person under Section 50 of the NDPS

Act, there is no mention about giving the option of search of the accused/respondent and her bags by a female, rather it is mentioned that the accused/respondent can get the search done by a Gazetted Officer or Magistrate or by PW-1 Rahul Bhagat, I.O, whereas, it should have been specifically mentioned in the notice under Section 50 of the NDPS Act (Ex.P-10) that the search of the accused/respondent, being a woman, would be conducted by a lady police only. Consequently, Ex.P-10 does not fulfill the requirement of Section 50 (4) of the NDPS Act.

That apart, PW-7 Gauriti Tirkey, Lady Constable, a member of search party, has stated that on 13.04.2007 at about 20:30 hours, she along with PW-1 Rahul Bhagat went to the spot and saw a woman standing at Nagarnar Chowk having two bags (one was rexine bag and another was simple bag). Thereafter, on the instructions of PW-1 Rahul Bhagat, she searched the accused/respondent and the above two bags which accused/respondent were holding and upon search, she found *ganja* like substance. In cross-examination, she admitted that it took about 10 minutes in searching the accused/respondent and her bags. She further admitted that they stayed at the spot for 10-15 minutes and thereafter came to the police station with the accused, meaning thereby, they must have reached the police station with accused by approximately 9:00 pm, but perusal of the documents (Exs.P-10 to P-20) would show that the alleged proceedings started on 13.04.2007 at 22:10 hours and ended on 14.04.2007 at 00:45 hours (midnight). If the statement of PW-7 Gauriti Tirkey is taken into consideration, it appears that the alleged search and other proceedings were completed at 9:00 pm, then, in that view of the matter, how the police could complete the entire proceedings as mentioned Exs.P-10 to P-20 at 22:10 hours to 00:45 hours (midnight)

and that too, without the presence of accused at the spot i.e. Nagarnar Chowk NH-43 road side and for this, no explanation has been offered by the prosecution as to why the time of the proceedings were shown separately, which makes the prosecution case doubtful.

This apart, PW-3 Hafiz Khan and PW-5 Budhram, witnesses to seizure, have stated that earlier also, 2-3 times, they had come to testify in other *ganja* cases and the prosecution has not clarified that as to why these witnesses were called by the police as an independent witnesses. Thus, the possibility of PW-3 Hafiz Khan and PW-5 Budhram, being a stock witnesses, cannot be ruled out and their evidence, being untrustworthy, does not inspire confidence for considering the above evidence. It is also pertinent to mention here that PW-1 Rahul Bhagat, Investigating Officer has stated in his Court statement that weighing scale of *ganja* was hand scale, whereas PW-6 Sarkar Singh Shori (weigher), constable No.208, has stated that the weighing scale was of lifting scale. On the contrary, PW-3 Hafiz Khan, in his Court statement, has stated that no such weighing machine was brought by the police during seizure proceedings, which also creates doubt in the prosecution case.

11. Thus, from perusal of the above statements, it is quite vivid that there are material inconsistencies in the statements of PW-1 Rahul Bhagat, Investigating Officer and PW-7 Gauriti Tirkey and their statements do not corroborate with the other witnesses and the documents available on record, which makes their version doubtful and untrustworthy. This apart, independent witnesses, being a stock witnesses, have also not supported the case of the prosecution and that the mandatory provisions of the NDPS Act have also not been complied with by the prosecution. The learned trial Court after elaborately discussed the evidence led by the

prosecution and after analyzing the entire evidence led by the prosecution has come to the conclusion that the prosecution has failed to bring on record any clinching and reliable evidence to show that on the date of incident, the accused/respondent was in illegal possession of 27 kg 500 gms *ganja* and as such, acquitted accused/respondent of the said charge leveled against her on the basis of benefit of doubt as the prosecution has miserably failed to prove its case beyond reasonable doubt.

12. After considering the material available on record as well as the elaborate judgment impugned passed by the trial Court, we are of the considered opinion that the judgment impugned acquitting the accused/respondent herein of the charge under Section 20(b)(ii)(C) of the NDPS Act, is just and proper and does not call for any interference.

13. Accordingly, this acquittal appeal by the appellant/State against the acquittal of the accused/respondent is hereby dismissed.

**Sd/-  
(Sanjay S. Agrawal)  
Judge**

**Sd/-  
(Radhakishan Agrawal)  
Judge**