



2026:CGHC:16803

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 144 of 2015

- State of Chhattisgarh, Through Station House Officer, Police Station - Mohan Nagar, District Durg, Chhattisgarh. **...Appellant**

versus

- Gurunam Singh @ Luckky Soni, S/o Sukhwant Singh, aged about 19 Years, R/o Modal Town, Near Panchmukhi Temple, Supela, District Durg, Chhattisgarh. **... Respondent**

For Appellant/State	:	Mr. Ram Narayan Sahu, Deputy Government Advocate along with Mr. Suresh Tandan and Mr. Narayan Prasad, Panel Lawyers.
For Respondent	:	None.

(Hon'ble Shri Justice Radhakishan Agrawal)

Judgment on Board

13.04.2026

1. The present acquittal appeal has been preferred by the appellant/State against the judgment dated 28.04.2015 passed by the learned Special Judge (NDPS Act), Durg, C.G. in NDPS Case No. 04/2014, whereby the respondent/accused has been acquitted of the charge under Section 21(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").
2. Case of the prosecution, in brief, is that on 30.01.2014, PW-7 S.L. Gorle, ASI, posted at Police Station Mohan Nagar, received secret information at about 07:10 a.m. that the respondent/accused, aged about 19 years, was in possession of brown sugar and was trying to sell it near *Sahu Pan Thela* at Amapara, Durg. The said information

was recorded in the *Rojnamcha Sanha* (Ex.P-26C) and was also sent to the superior officer. Thereafter, he formed a raiding party and called independent witnesses, namely PW-1 Manoj Gada and Sonu Sahu (not examined). The police team then proceeded to the spot, where the respondent was identified and apprehended. A notice under Section 50 of the NDPS Act (Ex.P-3) was served upon the respondent, informing him that he could be searched before a Magistrate or a Gazetted Officer. The respondent allegedly gave his consent to be searched by the police officer present at the spot. During the search, 20 small packets containing brown sugar were recovered from the right pocket of his pant. The substance was identified and weighed by PW-4 Manoj Mandal and was found to be 9 grams 46 milligrams (excluding packing material). The seized substance was sealed on the spot vide seizure memo (Ex.P-14) and thereafter deposited in the *Malkhana*. The samples were later sent to the FSL vide Ex.P-23, and the report (Ex.P-40) confirmed that the substance was a narcotic drug. After completing the necessary formalities, the respondent was arrested, an FIR (Ex.P-38) was registered against the accused/respondent.

3. After completion of investigation, charge sheet was filed against the accused/respondent before the Special judge under NDPS Act, Durg. The respondent abjured the guilt and claimed trial.
4. After appreciation of evidence, oral as well as documentary, the learned trial Court acquitted the respondent of the charge as mentioned in opening paragraph of this judgment.
5. Learned counsel for the appellant/State submits that the trial Court is not justified in acquitting the accused/respondent and has recorded perverse findings. He further submits that there is clear and reliable

evidence on record, particularly the testimony of the Investigating Officer, PW-7 S.L. Gorle, which shows that the alleged contraband (brown sugar) was recovered from the conscious possession of the respondent. He also submits that all mandatory provisions of the NDPS Act were duly complied with, but the trial Court failed to properly appreciate the evidence. Therefore, the impugned judgment of acquittal is erroneous and liable to be set aside.

6. I have heard learned counsel for the Appellant and perused the material available on record.
7. 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 in judgment at para 25, 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."

8. As regards the involvement of the accused/respondent in the crime in question, the testimony of PW-7 S.L. Gorle, Investigating Officer, is significant. He deposed that on receiving secret information from the informant, he recorded the same and informed his superior officer. Thereafter, he formed a raiding party, called independent witnesses, and proceeded to the spot where the accused was apprehended. He served notice under Section 50 of the NDPS Act and, after obtaining

consent, conducted the search. During the search, brown sugar was recovered from the possession of the accused, which was weighed and sealed on the spot. He further stated that after completing all necessary formalities, the seized articles were deposited in the *Malkhana*, sent for FSL examination, and thereafter further proceedings were carried out. However, on careful examination of his statement, it appears that although he stated that he informed the accused/respondent that he could be searched before a Magistrate or a Gazetted Officer, but the document {(Ex.P-3), notice under Section 50 of the NDPS Act} only indicates that an option was given and does not show that the accused/respondent was informed of his legal right in this regard. Though PW-7 stated that he orally informed the accused/respondent about this right, but the same is not mentioned in Ex.P-3. Therefore, it is clear that there was non-compliance of the mandatory provisions of Section 50 of the NDPS Act.

9. Further, PW-7, Investigating Officer, stated that the seizure and other proceedings were conducted in the presence of independent witnesses. However, the only independent witness examined, PW-1 Manohar Gada, has not supported the prosecution case. He denied that any seizure was made in his presence or that the proceedings (Exs.P-3 to Ex.P-16) were conducted before him, and also stated that his signatures were taken by the police under pressure. Moreover, the other independent witness, Sonu Sahu, has not been examined by the prosecution for the reasons best known to it. Thus, the prosecution case is not supported by independent evidence.
10. Moreover, the notices (Exs.P-2 and P-21) issued under Section 160 Cr.P.C. to Sonu Sahu and PW-1 Manohar Gada do not mention the date

on which they were required to appear. Further, these notices indicate that the independent witnesses were directed to appear at Amapara in front of Sahu Pan Thela, whereas as per *Rojnamcha Sanha* (Ex.P-29C), it is recorded that the witnesses were called directly at the Police Station. This contradiction also makes the prosecution story doubtful.

11. This apart, PW-7, Investigating Officer, stated that the alleged contraband was weighed on the spot by PW-4 Manoj Mandal and that proper procedure was followed. However, PW-4 has not supported the prosecution case. He stated that he does not know the accused/respondent and has not confirmed that the weighing was done in the presence of the accused/respondent or that the alleged contraband was recovered from him. Further, the finding of learned trial Court shows that on the same date i.e. 30.01.2014, this witness was present at another place in connection with a different NDPS case from 12:25 p.m. to 12:45 p.m., whereas in the present case, the time of weighing is mentioned as 12:15 p.m. to 12:35 p.m. This overlap in timing makes his presence at the spot highly doubtful.
12. The Investigating Officer (PW-7) has further stated that the seized contraband was sealed on the spot vide Ex.P-14 and thereafter deposited in the *Malkhana*. However, there is no clear evidence to show that the seal of the Station House Officer was affixed before deposit in the *Malkhana*, thereby creating doubt regarding compliance of Section 55 of the NDPS Act. Apart from this, no sample seal has been marked on the sample seal *panchnama* (Ex.P-15). Further, as per the FSL report (Ex.P-40), the sample marked as Article 'A' was sent for chemical examination, whereas in the seizure memo (Ex.P-14), no such marking of Article 'A' is mentioned. Furthermore, in the seizure memo (Ex.P-14),

after writing zero, the crime number appears to have been mentioned subsequently, which also creates doubt about the authenticity of the document and the prosecution case.

13. Thus, from perusal of the evidence on record, it is quite vivid that there are material inconsistencies in the statement of PW-7 S.L. Gorle, Investigating Officer and his statement does not corroborate with the statements of other prosecution witnesses and the documents available on record with respect to search, seizure and investigation, which makes his version doubtful and untrustworthy. Further, the evidence on record shows that the mandatory provisions of the NDPS Act have not been complied with by the prosecution and that the independent witnesses have also not supported the case of the prosecution. Moreover, the prosecution has also failed to establish that the accused/respondent had exclusive possession or conscious control over the alleged contraband. Even if the case of the prosecution is taken as it is, then it appears that the entire proceedings conducted by the prosecution appear to be doubtful and vitiated.
14. The learned trial Court has elaborately discussed the evidence led by the prosecution and after analyzing the entire evidence came to the conclusion that the prosecution has failed to prove all the facts of the charge leveled against the respondent beyond all reasonable doubt and as such, acquitted the accused/respondent of the aforesaid charge leveled against him.
15. The Hon'ble Apex Court in its judgment dated 12.02.2024 passed in Criminal Appeal No.1162 of 2011 in case of *Mallappa and Ors. Versus State of Karnataka*, has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

"(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral and documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

16. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in *Jafarudheen & Mallappa (supra)*, the view taken by the learned trial Court is a plausible and reasonable view. In the absence of any patent illegality or perversity, this Court finds no ground to interfere with the impugned judgment of acquittal passed by the learned trial Court.

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

Sd/-
(Radhakishan Agrawal)
Judge