

(2018) 09 CHH CK 0315
In the Chhattisgarh High Court
Case No : ACQA No. 54 Of 2009

State Of Chhattisgarh

APPELLANT

Vs

Sukal

RESPONDENT

Date of Decision : 20-09-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378(3)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(B)II(B)

Citation : (2018) 09 CHH CK 0315

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : K. Tripti Rao, Vikash Shrivastava

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 378(3) of the Code of Criminal Procedure, 1973 against judgment dated 14.03.2007 passed by Special Judge,

NDPS Act, Bastar at Jagdalpur (C.G.) in Special Case No. 34/2006, wherein the said court acquitted the respondent for commission of offence under

Section 20(B) II(B) of Narcotic Drugs & Psychotropic Substances Act, 1985 for having possession of contraband article ganja measuring 5.350 Kg.

on 07.10.2006 at about 1.10 a.m. near Dhanpunji Mandi Naka, Jagdalpur (C.G.).

2. In the present case, the respondent is a female namely Sukal, W/o Mithu, caste-Bhatra, aged 29 years, resident of Panarapara, Jagdalpur. To

substantiate the charge, the prosecution examined as many as 5 witnesses. From evidence of investigating officer Sub-Inspector M. Yakub Menon

(PW-5), search was made by one constable Godowari. Said Godawari is listed in witnesses of prosecution as per charge-sheet, but she has not

examined before the trial court. Sub-Inspector M. Yakub Menon (PW-5) deposed that after search, the contraband article was found in possession of the respondent, but the material witness who searched the respondent namely Godawari, Constable is not examined by the prosecution before the trial court.

3. There is no document that Godawari, Constable has searched the respondent and signed on any search paper. As per Section 50(4) of NDPS Act, a female can be searched only by a female. When the respondent is female, the search should be proved by a female witness, who searched the respondent, but there is no evidence produced by the prosecution before the trial court which is serious lacuna on the part of the prosecution. In absence of evidence of the constable Godawari, it is not proved that she has searched the respondent and seized contraband article from possession of the respondent.

4. The trial court again evaluated the evidence regarding all the process and sending proceeding to higher authorities and came to conclusion that the proceeding is also under cloud and therefore, charge is not established.

5. After going through the entire record and looking to the evidence, this Court has no reason to substitute the finding recorded by the trial court.

6. Accordingly, the appeal is liable to be and is hereby dismissed.