
(2012) 07 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 783 of 1998

State of Gujarat

APPELLANT

Vs

Bhuresha Alhanashah Saiyed and Another

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 23, 29, 50, 8(C)

Citation : (2013) 1 Crimes 567

Hon'ble Judges : A.L. Dave, J;A.J. Desai, J

Bench : Division Bench

Advocate : L.B. Dabhi, app, for the Appellant; R.E. Variva, Ms. Chetnaben Joshi and Ramnandan Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—This appeal arises out of the judgment and order rendered by the Sessions Court, Bharuch on 5.8.1998 in Sessions Case No. 146 of 1995 acquitting the respondents of the charges relating to offences punishable under Sections 8(C), 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short "NDPS"). As per the prosecution case, while Ismail Aadam Mitha (Tailor) respondent No. 2 was being interrogated, he disclosed certain information that present respondent No. 1 was likely to come to Sitpon to collect the proceeds of sale of brown sugar sold earlier. The Police, therefore organized a watch in presence of Panch Witnesses and intercepted respondent No. 1. He was found to be carrying a bag on his shoulder where from 910 grams of brown sugar was found from a polythene bag. Two samples of 5 Gram each were drawn there from and then the remaining quantity of 5 grams each were sealed and seized. FIR was lodged and respondents were arrested.

2. The case was investigated and ultimately charge-sheet was filed. The Trial Court framed charge against the accused Bhuresha Alhanashah Saiyed and Ismail Aadam Mitha (Tailor) for the offences as stated herein above.

3. The Trial Court found that prosecution was unable to prove the charges levelled against the accused persons and therefore, acquitted both of them and hence this appeal by the State of Gujarat against acquittal.

4. We have heard learned A.P.P. Mr. Dabhi for the appellant. Ms. Ami Patel for Mr. Ram Nandan Singh for respondent No. I and Mr. R.E. Variava for respondent No. 2.

5. Learned A.P.P. has taken us through the record and proceedings. He submitted that the Trial Court has committed an error in recording acquittal, since there is concrete evidence that respondent was found to be in possession of 910 grams of brown sugar at the time of his apprehension by Police. Necessary requirements have been fulfilled by the Investigating Agency and the Trial Court, therefore, erred in acquitting the respondents. The appeal may therefore, be allowed.

6. Learned Advocate Ms. Patel for respondent No. 1 submitted that the mandatory requirements of law have not been followed by the Investigating Officer and therefore, the Trial Court was justified in recording acquittal.

7. Having gone through the record and proceedings, Particularly, Panchnama of search and seizure (Ex. 22), FIR (Ex. 26) and the evidence of the Investigating Officer, we find that mandatory requirement of Section 50 of the NDPS Act of informing the right of suspect to be searched in presence of a Magistrate or a Gazetted Officer and an option to him of being searched in presence of another Magistrate or Gazetted Officer has not been complied with. He was intercepted, searched and contraband was seized. Therefore, there is total non-compliance of Section 50 of the NDPS Act which has been held to be mandatory by catena of decisions of the Apex Court. In light of these facts, it cannot be said that the Trial Court has erred in recording acquittal of the respondents. We do not find any merits in the submissions made by learned A.P.P. and the appeal, therefore, must fail and stands dismissed.