
(2017) 02 AHC CK 0010

In the Allahabad High Court

Case No : Criminal Misc. Leave to Appeal Application No. Nil of 2017 in
Government Appeal No. 561 of 2017

State of U.P.

APPELLANT

Vs

Mohd. Shafi @ Guddu

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22(c)

Citation : (2017) 99 ACrC 262 : (2017) 173 AIC 930

Hon'ble Judges : Harsh Kumar, J.

Bench : Single Bench

Advocate : G.A, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Harsh Kumar, J.— Heard learned A.G.A. and perused the record.

2. The present appeal has been filed against the acquittal of respondent Mohd. Shafi @ Guddu of the charges under Section 22(C) of N.D.P.S. Act.

3. Upon hearing learned A.G.A. and perusal of record as well as the impugned order, I find that as per prosecution case, on 30.5.2014 the police party apprehended Abdul Rasheed at about 3:35 p.m. from whom no recovery is alleged to have been made. It is alleged that upon disclosure made by Abdul Rasheed that he deals with the business of diazepam and smack on the financial support given by respondent Mohd. Shafi @ Guddu and Riyaz son of Ishaq and upon his taking the police party to the house of Riyaz and Mohd. Shafi @ Guddu, when seeing the police party Mohd. Shafi @ Guddu and Riyaz managed to flee away, Abdul Rasheed got recovered seven big packs weighing 47 gms. and 20 small packs weighing 9 gms. of smack and a polythene bag containing 700 gms. of diazepam powder, which were hanging on the walls of the room in the house of accused.

4. Undisputedly the respondent was not caught on the spot and no recovery of

any prohibited contraband is alleged to have been made from his possession. At internal page 11 of the impugned judgment the trial court has categorically analysed the evidence on record, wherein it has been held by trial court that as per the site-plan of the house where from the recovery was made, the house belonged to Mohd. Riyaz and did not belong to respondent Mohd. Shafi @ Guddu. It has also been admitted by prosecution witness that the recovery of material was made from the house of Mohd. Riyaz and no recovery was made from the house of Mohd. Shafi @ Guddu. It is not the case of prosecution that Mohd. Riyaz and Mohd. Shafi @ Guddu are related to each other in any manner whatsoever or were dealing with narcotics to any extent or that accused-respondent was co-owner or co-sharer in the house in question. In the circumstances the recovery at the pointing of Abdul Rasheed from the house of Mohd Riyaz even if admitted, may not be sufficient to prosecute the respondent Mohd. Shafi @ Guddu, from whom or from whose house no recovery is alleged to have been made. It is also pertinent to mention that the recovered material was neither produced nor proved before the trial court and so also the correctness of impugned order of acquittal may not be questioned.

5. It is settled principle of law as held by Hon'ble the Supreme court in the case of K. Prakashan v. P.K. Surenderan, (2008) 1 SCC 258 "When two views are possible, appellate Court should not reverse the Judgment of acquittal merely because the other view was possible. When Judgment of trial Court was neither perverse, nor suffered from any legal infirmity or non consideration/misappropriation of evidence on record, reversal thereof by High Court was not justified".

6. In view of the discussions made above, I have come to the conclusion that the learned A.G.A. has failed to show that the learned trial court did not consider any evidence on record or has misread the evidence on record or to show any legal infirmity, incorrectness or perversity in the findings given in the impugned order of acquittal and there is no sufficient ground for interfering with or setting it aside the acquittal order and substituting it with conviction order. I find that virtually the prosecution has no case against the respondent and recommendation of appeal in such matters is quite unwarranted. The application u/s 378 (4) Cr.P.C. has no force and is liable to be dismissed.

7. The application u/s 378 (3) Cr.P.C. for leave to file appeal is dismissed accordingly and the appeal also stands dismissed.

8. Let a copy of this order be sent to Principal Secretary, Law, Government of Uttar Pradesh, Lucknow.