

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Appeal No.74 OF 2020**

Between:

The Drugs Inspector,  
rep. by its Public Prosecutor,  
High Court for the State of Telangana,  
Hyderabad.

.... Appellant.

AND

Chippa Thirupathi.

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 17.06.2022

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

\* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.74 of 2020

% Dated 17.06.2022

# The Drugs Inspector,  
rep. by its Public Prosecutor,  
High Court for the State of Telangana,  
**Hyderabad.**

... Appellant

And

\$ Chippa Thirupathi

..Respondent.

! **Counsel for the Appellant:** Learned Public Prosecutor

^ **Counsel for the Respondent:**

>HEAD NOTE:

? Cases referred

<sup>1</sup> (2013) 11 supreme court Cases 688

<sup>2</sup> (2021) 6 Supreme Court Cases 116

**HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.74 OF 2020****JUDGMENT:**

1. Aggrieved by the acquittal of the sole respondent, the State preferred the present appeal. The respondent was charged for the offence under Section 27(b)(ii), 28 and 22(3) of Drugs and Cosmetics Act, 1940 (for brevity 'the Act') for contravention of Sections 18(c), 18(A) and 22(1)(cca) of the Act.

2. Briefly, the case of the prosecution in the complaint filed before the I Additional District and Sessions Judge, Adilabad was that the respondent was found in the premises of door No.2-215, Chata Village and in possession of drugs meant for sale, without a valid licence, as detailed in Exs.P1 and P2 which are Form No.16 and Panchanama. P.W.1, who is the Drug Inspector in the presence of P.Ws.2 and 3, who are panch witnesses to seizure conducted the seizure of the said drugs. Having seized the said drugs, P.W.1 issued notices to produce valid licence if any. The respondent did not reply to the said notice. P.W.1 further caused enquiry about the

ownership of the premises and in the process, examined P.Ws 4 and 5, who are building owner and Panchayat Secretary of the said village.

3. The grounds on which the learned Sessions Judge acquitted the respondent/accused are that; i) the exclusive possession of the premises in which the drugs were found was not proved to be that of the accused; ii) the witnesses to the seizure P.Ws.2 and 3 have turned hostile and denied the seizure; (iii) the date on Ex.P12 sent to P.W.4 was corrected; iv) the tour diary of P.W.1 was not produced though P.W.1 admitted to have maintained a diary and written the details.

4. Having found the said infirmities in the prosecution case, the learned Sessions Judge acquitted the respondent extending benefit of doubt as the complainant/P.W.1 failed to prove the case against the respondent.

5. Learned Assistant Public Prosecutor submitted that though the witnesses to the proceedings turned hostile, the evidence of P.W.1 can be believed and can be solely made basis for convicting the respondent. Further, the owner/P.W.4

has deposed that the premises was given on rent to the respondent/accused.

6. Learned Sessions Judge has found that exclusive possession of the premises where from the drugs mentioned under Exs.P1 and P2 were seized, has to be proved beyond reasonable doubt. Admittedly, no document is filed by P.W.1 nor P.W.4 produced any document to substantiate that the premises was given on rent to the respondent/accused. If there were transactions such as lease deed or rents regarding giving the premises on lease, the burden is on P.W.1 to prove the relationship of land lord and tenant between the respondent/accused and the house owner. When it is not proved beyond reasonable doubt that the premises was in possession of the respondent/accused, it cannot be conclusively said that it is the respondent only, who was in possession of the alleged premises.

7. Further, the independent witnesses P.Ws.2 and 3 who were present according to PW1 during the search and seizure proceedings turned hostile to the prosecution case and denied

any knowledge of the seizure. In the facts and circumstances, when there is no credible evidence to connect the premises where drugs were found to the respondent and further the hostility of P.Ws.2 and 3, independent witnesses, cast a doubt on the case of the complainant being correct.

7. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**<sup>1</sup> and also in the case of **Guru Dutt Pathak v. State of Uttar Pradesh**<sup>2</sup> held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some cases, it may even

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<sup>1</sup> (2013) 11 supreme court Cases 688

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indicate a false implication. But then, this has to be established on record of the Court.

8. In Guru Dutt Pathak's case (supra), the Hon'ble Supreme Court held as follows:

“15. In *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], this Court reiterated the legal position as under : (SCC p. 432, para 42) ‘42. ... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

9. It is the bounden duty of the complainant to prove beyond reasonable doubt against the respondent/accused regarding the exclusive possession of the premises, failing which, the prosecution fails in the back ground of the

respondent/accused totally denying any knowledge about the premises and the drugs seized. When there is no corroboration by oral or documentary evidence, to support the version of P.W.1 that drugs were seized from the possession of the respondent/accused in his premises, PW1's version cannot be believed.

10. For the aforementioned reasons, when there are no legal grounds to discard the finding of the trial Court, there cannot be any interference in the order of acquittal.

11. Accordingly, the appeal filed by the State fails and the same is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

Date: 17.06.2022  
kvs

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**K.SURENDER, J**



**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL APPEAL No.74 OF 2020

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