

GAHC010008962023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.L.P./19/2023

UNION OF INDIA
(NARCOTICS CONTROL BUREAU) GUWAHATI ZONAL UNIT,
HOUSE NO. 2, CHACHAL VIP ROAD GUWAHATI- 781022. REP. BY SH. ANIL
JUSHWAHA, INTELLIGENCE OFFICER, NCB GUWAHATI.

VERSUS

DHAN BORO @ DHON BORO
S/O LATE HOREN BORO,
HUSBAND OF NIVA BORO,
H.NO. 58, BY LANE NO. 2, KOINADHARA, P.S.- BASISHTHA, KHANAPARA,
GUWAHATI- 781022.

Advocate for the Petitioner : MR. S C KEYAL,

Advocate for the Respondent : MR U S BORGOHAIN, MS DIPSY RAJA,MR P KATAKI

Linked Case :

UNION OF INDIA

VERSUS

DHAN BORO @ DHON BORO . E

Advocate for : MR. S C KEYAL
Advocate for : appearing for DHAN BORO @ DHON BORO . E

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

Date : 17.12.2024

- 1.** Heard Mr. K. Jain, learned counsel for the applicant/NCB. Also heard Mr. P. Kataki, learned counsel for the opposite party..
- 2.** This application has been filed under Section 378(3) of the Code of Criminal Procedure, 1973 praying for leave to file Appeal against the Judgment and Order dated 07.09.2022 passed by the learned Additional Sessions (Spl.) Judge No.3 (FTC), Kamrup(M), Guwahati in NDPS Case No.92/2018, whereby the opposite party Dhan Bora was acquitted on
- 3.** I have considered the submissions made by learned counsel for both the sides.
- 4.** Paragraph No.43 of the aforesaid Judgment reads as follows:

However, so far as accused Dhan Boro is concerned, admittedly no contraband was recovered or seized from his possession. According to the prosecution, the aforesaid three accused persons revealed that they brought the recovered Ganja from Kumarghat, Tripura to deliver the same to accused Dhan Boro in Dhaba near Meghalaya compound, Beltola Guwahati. Prosecution has examined PW-6 and PW-7 to prove call details record to establish the fact that accused persons had frequent talks with accused Dhan Boro over phone. But even if, other accused persons had talks with accused Dhan Boro, it cannot be said definitely that they had the talks relating to the consignment of the contraband. Prosecution has proved the statement of accused Dhan Boro recorded U/S 67 of the NDPS Act as Ext-5 in which he has stated that he placed order with accused Ranjan Sarkar to bring the Ganja. In

*the case reported in **(2021) 4 Supreme Court Cases 1 (Toofan Singh Vs. State of Tamil Nadu)**, the Hon'ble Apex Court has held that a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act. If the statement recorded under Section 67 of the NDPS Act goes, then there remains no evidence to fasten the accused Dhan Boro with the charges he is facing trial. Therefore, it is held that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt. Accused Dhan Boro deserves an acquittal and accordingly, he is acquitted.*

- 5.** In the memo of Appeal also, it is admitted that since nothing was recovered from the possession of the Dhan Boro he was acquitted by the Trial Court.
- 6.** I have also gone through the Judgment of the Trial Court.
- 7.** I find that impugned Judgment does not require any interference of this Court.
- 8.** Therefore the prayer for leave to Appeal is rejected.
- 9.** The Criminal leave petition is disposed of accordingly.

JUDGE

Comparing Assistant