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ITEM NO.101 PH COURT NO. 10 SECTION IIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1160/1999

MOHD. ALI NAVED Appellant

Versus

STATE OF MADHYA PRADESH Respondent

(WITH Office Report)

Date. 14.12.2000 This/These Petition(s) was/were called on  
for hearing today.

CORAM:

HON'BLE MR.JUSTICE M.B.SHAH  
HON'BLE MR.JUSTICE S.N.PHUKAN

For the Appellant(s)

Mr.P.S. Mishra,Sr.Adv.,  
Mr.Rakesh K. Khanna,Adv.,  
Mr.Manu Shanker Mishra,Adv.,  
Mr.Chandra Shekahr,Adv.,  
Mr.Vishnu Sharma,Adv.,  
Mrs.Ritu Jalali,Adv.,  
Mr.Upender Mishra,Adv.and  
Mr.Rajesh Prasad Singh,Adv.

For the Respondent(s)

Mr.Sakesh Kumar,Adv.for  
Mr.Uma Nath Singh,Adv.

UPON hearing counsel the Court made the following  
O R D E R

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The appeal is allowed. The impugned orders are  
quashed and set aside. The appellant be released  
forthwith if not required in any other case.

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(Vijay Kumar Sharma)  
Court Master

(S.Malkani)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRL. APPELLATE JURISDICTION

CRL. APPEAL NO. 1160 OF 1999@@  
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MOHD. ALI NAVED

Appellant

Versus

STATE OF MADHYA PRADESH

Respondent

O R D E R@@  
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The appellant and one Mohd. Akhtar were convicted under section 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and were sentenced to rigorous imprisonment for 10 years and a fine of Rs.1,00,000/- each and in default in the payment of fine to undergo further rigorous imprisonment for two years, by the Special Judge, Chhatarpur in Special Case No.192/1992 by the judgment and order dated 7.10.1995. Against that judgment and order accused preferred Criminal Appeal No.1474/1995 . By the impugned judgment and order dated 14.5.1999 the Jabalpur Bench of the High Court of Madhya Pradesh dismissed the said appeal. That judgment and order is challenged by filing this appeal by one of the accused namely, Mohd. Ali Naved.

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It is the prosecution case that Fiat Car No. BLO 149 while passing through Bijawar check post on 4.10.1992 at 2.00 a.m. was intercepted by police and checked. The appellant was sitting in the front seat of the car and the car was driven by other accused Mohd. Akhtar. In the said car one woman and children were sitting. It is alleged that a tin box was found containing 10 kgs. of charas. Hence appellant as well as the co-accused were@@ CCCCCC arrested on the spot and after trial convicted as stated above.

The appellant in his statement under section 313, Cr.P.C., has stated that he was a resident of Muzaffarpur, Bihar. His brother-in-law was staying at Bombay. When Mohd. Akhtar was going to Bombay he boarded his car at Patna for going to Bombay. The police stopped the said car at Ghore Wale Cross Road and demanded entry fee of Rs.500/- from them. He was ready to pay only Rs.100/- but the police personnel did not agree. Thereafter, Mohd. Akhtar drove ahead. When they reached half a kilometer, police car followed them and they were booked in a false case.

At the time of the hearing of this appeal, Mr.P.S. Mishra, the learned senior counsel appearing for the

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appellant, submitted that the judgment and order passed by the High Court confirming the judgment and order passed by the Special Court is manifestly illegal and

erroneous. He pointed out that evidence on record clearly indicates that the appellant was not at all involved in the said crime and the mudammal article@@  
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charas was not found from his possession. Neither he was@@  
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in joint possession of the said substance. The Learned counsel appearing on behalf of the respondent-State however supported the judgment and order passed by the courts below.

At the time of the hearing of this matter learned counsel for the parties have taken us through the entire evidence. In our view, after going through the said evidence it is apparent that there is no evidence or even suggestion made by the prosecution witnesses, who are all police officers that the appellant was in joint possession of the said article. On the contrary, Vishwanath Jaria (PW-3) investigating officer who conducted the search has specifically stated that articles were kept in the diggy of the car. In crosss-examination, he has also admitted that the key of the said diggy was taken from accused Mohd. Akhtar. It

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is also not disputed that car belonged to Mohd. Akhtar. In the seizuer memo which is produced on record and is exhibited it has been stated that car was registered in the name of Mohd. Akhtar. This seizure memo specifically states that the articles were seized from Mohd. Akhtar. Nowhere it mentions that the present appellant was involved or concerned with the said articles. As the Seizure memo was prepared on the spot in presence of independent witnesses and it does not mention that the appellant was in possession of the seized article, it would be difficult to hold or draw inference that he was concerned with the said article or involved in the crime. It is to be stated that S.P.Shukla (PW-2), Vishwanath Jaria (PW-3) I.O., R.K. Singh (PW-4) City Inspector, have not at all stated that present appellant was in any way concerned with the seized article nor they involve him in any manner. In this view of the matter the judgment and order passed by the learned Special Judge convicting the appellant which is confirmed by the High Court in appeal are, on the face of it, illegal and erroneous.

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In the result, the appeal is allowed. The impugned orders are quashed and set aside. The appellant be released forthwith if not required in any other case.

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.....J.  
(M.B. Shah)

.....J.  
(S.N. Phukan)

New Delhi,  
December 14, 2000.