

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.93 OF 2001

Shaikh Gaffar Gani,
Age 47 years, occ. Press
Reporter, resident of
Sangamner, Dist.Ahmednagar ..Appellant

Versus

State of Maharashtra ..Respondent

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Mr.Vijay Sharma, advocate for appellant

Mrs.M.S.Patni, APP for respondent - State

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CORAM : M.T. JOSHI, J.
DATE : AUGUST 24, 2015

ORAL JUDGMENT :

Heard both sides.

2] Present appellant has been convicted by learned Special Judge / Addl. Sessions Judge, Sangamner, Dist. Ahmednagar in Sessions Case No.144 of 2000 for the offence punishable under Section 20(b)(i) of the Narcotic Drugs and

Psychotropic Substances, Act and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.30,000/-, in default to suffer, rigorous imprisonment for one year. Hence, the appeal.

3] The appellant was in jail from 25th December, 1998 till the decision by learned Special Judge on 29th January, 2001.

4] The prosecution case, in short, is as under :-

. PW 3 – Govindrao Pawar, Police Inspector, got a secret information that present appellant was in possession of Ganja and was selling the same in his house constructed in Sainagar area of Sangamner. The complainant, therefore, collected two panch witnesses i.e. PW 1 – Vilas Gaikwad and PW 5 – Sunil Godase. Initially, he intimated the secret information to his superior Officer and

therefore, conducted raid with the panch witnesses. At that time, the appellant was found in his house. The house was situated in the bed of river namely, Mhalungi. The house was closed from inside. Upon knocking the door, present appellant came out. He was asked as to whether, he required the search to be made through a gazetted officer, however, he declined for the same.

. While carrying search of the house, 2630 gms. of ganja was found in his house in drum, small bags etc. Panchnama was accordingly prepared. The appellant was arrested on the spot. It was informed that the electricity supply in the house of the appellant was taken from the neighbor. The activities regarding sealing of bags, labeling the same with signature of the panch witnesses, was carried and thereafter, charge sheet was filed.

5] Before learned Special Judge, seven witnesses were examined. The panch witnesses did not support the prosecution case. Complainant Govindrao Pawar, P.I., was examined as PW 3. Besides him, PW 6 – Dnyaneshwar Awari was examined as a member of the raiding party. The report regarding possession of the house was obtained from the Talathi, who had issued the certificate on the same night. The Talathi was also examined as PW 4. Further, the Chief Executive Officer of Municipal Council, Sangamner also issued certificate at Exhibit 78.

6] Learned Special Judge came to the conclusion that the house was owned by present appellant and though the panch witnesses turned hostile, the complainant as well as police head constable deposed on the line of the prosecution case. Therefore, relying on the testimony of these witnesses, the conviction came to be recorded against the appellant.

7] Mr.Sharma, learned counsel for the appellant, submits that the positive defence taken by the appellant that he was editor of weekly 'Patrakarachi Chetavani' and also correspondent of weekly 'Bahishkrut Bharat'. Just two days preceding the alleged raid i.e. on 23rd December, 1998, present appellant had got published a news against the complainant. It was further admitted by the complainant in his cross-examination that in one case, this High Court was required to impose fine on the complainant – Police Inspector and certain criminal case was pending against him, which went upto the Hon'ble Supreme court.

8] In the circumstances, Mr.Sharma submits that not only personal animosity of the complainant against the present appellant, is strongly established, but even the veracity of the witnesses i.e. complainant – Investigating Officer

and his staff member was seriously dented. In that view of the matter, he submits that learned Special Judge ought to have extended reasonable benefit of doubt to the present appellant.

9] On the other hand, learned APP submitted that though both the panch witnesses turned hostile, it would not automatically entail into acquittal of the appellant. Learned Special Judge had occasion to note the demeanor of the witnesses and therefore, no interference in the reasons forwarded by learned Special Judge is warranted.

10] On the basis of this material, following point arises for my determination :-

Whether the prosecution has proved that on 25th December, 1998, present appellant was in possession of 2630 gms. ganja at his house at Sangamner ?

. My finding to the above point is in the negative and the appeal is, therefore, allowed for the reasons to follow.

R E A S O N S

11] Both the panch witnesses had turned hostile and nothing reliable was extracted by the prosecution in their cross-examination. According to them, they were merely asked to sign the panchnama, though no activities, as purported in the panchnama, has occurred in their presence.

. It is no doubt true that in a given case, the court may rely over the evidence of the police witnesses. However, prudence requires that certain corroboration is required or at least, the statements of these witnesses should inspire confidence.

12] In the cross-examination, the complainant deposed that he was not aware as to whether, the appellant was editor of a weekly and correspondent of another weekly, as detailed supra. The issue of weekly 'Bahishkrut Bharat' dated 27th December, 1998, was confronted to him. It was placed as 'Article - A'. It would show that a news was published prior to present incident against the complainant in said weekly and the name of the correspondent is that of present appellant.

. Not only this, the complainant - Police Inspector has admitted in his cross-examination that this High Court had imposed fine on him in a case in 1998. Further, he admitted that he was facing certain criminal case arising out of certain incident occurred in his earlier tenure as Police Inspector at Shrirampur and said case went upto the Hon'ble Supreme Court.

13] As regards the ownership or occupation of the house in question, the prosecution has relied over the certificate at Exhibit - 78, issued by the Chief Officer of the Municipal Council as proved by PW 7 - Purushottam Jagdale, the overseer in the Municipal Council, who is acquainted with the signature of the then Chief Officer. The another certificate is issued by the certain Talathi i.e. PW 4 - Mohandas Kulkarni.

. While Talathi PW 4 - Mohandas, in examination-in-chief itself, deposed that when he asked one Namdeo Ghodekar regarding the house, he told him that the house belongs to the present appellant and therefore, he passed the certificate.

. As regards the certificate issued by the Chief Officer, merely the signature of the Chief Officer by the employee who was conversant with the

signature of the Chief Officer is proved, we do not know as to on what basis, the said certificate was issued.

14] If all these facts are taken into consideration, then, in my view, benefit of reasonable doubt should have been extended to the appellant by learned Special Judge.

15] Hence, the following order :-

A] The appeal is hereby allowed.

B] The impugned judgment and order dated 29th January, 2001 passed by learned Special Judge/ Sessions Judge, Sangamner, in Sessions Case No.144 of 2000 convicting and sentencing the appellant for the offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances, Act, is hereby set aside.

. Instead, the appellant is acquitted of the offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances, Act.

C] Fine amount, if any, deposited by the appellant be refunded to him.

D] Muddemal property be disposed of as per the directions of the learned Special Judge/Addl. Sessions Judge, Sangamner.

[M.T. JOSHI, J.]