

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Appeal No.55 Of 2003.

The State of Maharashtra.

Through Police Station, Parner,

District : Ahmednagar. (Maharashtra)

... **Appellant.**

Versus

(1) Sheshrao Vishwambhar Birasdar.

Age : 34 Years., Occ.: Agri. &
Insurance Agent.

R/o.: Chitkotabi, Post : Ladbanti,
Taluka : Bachavkalayan,
District : Bidar.

(2) Sanjaykumar Kantappa Khashampure.

Age : 31 Years., Occ.: Driver.

R/o.: Bajampalli, Post : Yernali,
Taluka & District : Bidar.

(3) Somesh Arjunrao Raikar.

Age : 22 Years., Occ.: Lodge Manager.

R/o.: Sai Vimala Lodge,
Bidar.

(4) Ambrish Shivraj Parma.

Age : 21 Years., Occ.: Driver.

R/o.: Vidyanagar Colony, H.No.9/1354,
Mailur Road, Bidar.

(5) Gajanan Datta Prasad.

Age : 23 Years, Occ : Agriculturist.

R/o.: Shrichand, Taluka : Aland.

District : Gulbarga. (Karnataka)

... **Respondents.**

Appearance =>

Mr. V.P. Kadam, Assistant Public Prosecutor for the State of Maharashtra.

Mr. A.G. Rodge, Advocate for Respondent Nos. 1 and 5.

Mr. K.M. Babhulgaonkar, Advocate h/for Mr. S.G. Rudrawar, Advocate for Respondent Nos. 2 to 4.

CORAM : M.T. Joshi, J.

DATE : 1st September, 2015.

O R A L J U D G M E N T :-

Heard both the sides.

[2] Present Respondents were acquitted by the learned Special Judge cum 2nd Ad hoc Additional Sessions Judge, Ahmednagar, District - Ahmednagar vide his Judgment and Order dated 22nd August, 2002 passed in Special Case No.62/2002 for the offences punishable under Section/s. 20(b)(1), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act. Hence, the present Criminal Appeal.

[3] Prosecution case, in short, is as under :-

That on 25th March, 2002 while one Jagdish Indrabhan Pote - Police Constable B.No.1631 of Police Station, Parner, District - Ahmednagar was on patrolling duty in Parner City. That time, he found that, one vehicle - Tata Sumo bearing registration No.MH/05/F/314 was moving in a suspicious manner in front of Government Rest House, therefore, he intercepted the said vehicle. Seven inmates were found therein. Therefore, vehicle alongwith seven inmates i.e. present Respondents were brought to the Police Station.

Present Respondent No.4 was found to be driver of the said vehicle. Thereupon, Police Head Constable - Nana Baburao Shirke called the Taluka Executive Magistrate, two panch witnesses and the photographer. Thereafter in their presence, search of vehicle was taken. In the backside of the vehicle, between two seats, three boxes were found. In the said boxes, ganja (contraband article) was found having net weight of 33 Kilogram and 400 Grams. Accordingly, sample packets of 50 Grams each from three packets were prepared. Taluka Executive Magistrate was present there. In his presence, all the activities were carried. Rest of ganja was also seized and then Police Head Constable Nana Shirke filed a complaint against the Respondents for the offences punishable under Section/s. 20(b)(1), 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act.

[4] The investigation was carried by PW No.6 - Police Inspector Hanumant Kundlikrao Jagdale. Upon receipt of the complaint, he sent information to his Superior Officer by telephone. He was also present at the time of carrying the search of the vehicle. He prepared panchnama in presence of the panch witnesses. He arrested all the Respondents. He recorded the statements of four witnesses. Samples were sent for Chemical Analysis examination. They were found positive for ganja. The complainant tried to contact the owner of vehicle for two days but could not contact him. After two days, she could be contacted. The owner reached to the Police Station and told that, she had given her vehicle - Tata Sumo for pilgrimage. In the circumstances, charge sheet came to be filed in the court of law.

[5] Before the learned Special Judge, in all six witnesses were examined. The panch witnesses to the panchnama of seizure did not support the prosecution case. Besides this, Jagdish Pote (Police Constable) who has allegedly brought the present Respondents alongwith the vehicle containing ganja to the Police Station was also not examined before the Court. Though other peripheral witnesses like the Complainant and the Investigating Officer were examined, the learned Special Judge for these reasons and *inter alia* for the reason that there is no compliance of Section 52 of the Narcotic Drugs and Psychotropic Substances Act, extended the benefit of doubt to the present Respondents and acquitted them.

[6] The learned Assistant Public Prosecutor submitted that huge quantity of ganja i.e. 33 Kgs. and 400 Grams was found in a vehicle. As Taluka Executive Magistrate was called, in whose presence exercise of the search was carried, there is no reason to come to the conclusion that there was breach of any mandatory provision of the Narcotic Drugs and Psychotropic Substances Act. Hence, he submitted that, Criminal Appeal be allowed.

[7] On the other hand, the learned counsel for the Respondents submitted that material witness, who allegedly brought the Respondents alongwith vehicle containing Ganja to the Police Station from a road nearby the Government Rest House, was not examined. Independent witnesses did not support the prosecution case and therefore, it was submitted that the learned Special Judge has taken reasonable and probable view of the matter and hence interference in the impugned Judgment is not warranted.

[8] On the basis of this material, following points arise for my determination :-

Points.

(1) Whether the prosecution has proved that on 25th March, 2002 at about 21.30 hrs on Parner to Alkuti road, in front of Government Rest House at Parner, Taluka - Parner, District – Ahmednagar, the present Respondents were found in possession of Ganja weighing 33 Kilograms and 400 Grams in a vehicle Tata Sumo bearing registration No. MH/05/F/314, in contravention of the provisions of the Narcotic Drugs and Psychotropic Substances Act.?

(2) Whether the prosecution has proved that, at the given date, time and place, present Respondents were found transporting Ganja interstate.?

(3) What Order.?

My findings to the point Nos. (1) & (2), are in the negative. Criminal Appeal is, therefore, dismissed for the reasons to follow:-

REASONS

[9] The learned Special Judge has taken into consideration that complaint filed by the Police Constable would show that, all the exercise of calling taluka Executive Magistrate, collecting panchas and photographer is already occurred and thereafter, First Information Report was filed. PW No.6 Police Inspector Hanumant Jagdale has deposed that, upon receipt of the Complaint he carried this exercise.

[10] It should be noted that, according to the prosecution, one Police Constable - Jagadish has brought all the Respondents alongwith the vehicle containing Ganja (contraband article) from elsewhere to the Police Station. Said Police Constable was not examined. Independent panch witnesses did not support the prosecution case that even at the Police Station, anything was found in the vehicle. In that view of the matter, there is no need to advert to the issue as to whether there was a breach of any mandatory provisions, as provided in the Narcotic Drugs and Psychotropic Substances Act. The learned Spacial Judge has taken reasonable and probable view. Hence, the following order :-

ORDER

- (i) Criminal Appeal is hereby dismissed.
- (ii) Bail bonds of the Respondents shall stand cancelled.
- (iii) Disposal of the property on the line of directions already issued by the learned Special Judge cum 2nd Ad hoc Additional Sessions Judge, Ahmednagar, District – Ahmednagar.

(M.T. JOSHI, J.)