

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 173 OF 2011**

Sagar Gorakh Pardeshi,
Age : 25 yrs., Occ: Labour Work,
R/O: Bamnoli Tal. Miraj,
Dist. : Sangli

...Appellant
(Org.Accused No. 1)

Versus
The State of Maharashtra,
(At the instance of Rural Police Station,
Miraj Dist. : Sangli)

...Respondent

Ms. Shraddha Sawant, appointed Advocate for the Appellant

Ms. R. V. Newton, A.P.P. for Respondent-State

**CORAM:- REVATI MOHITE DERE, J.
TUESDAY, 26th JULY, 2016**

ORAL JUDGMENT :

1. By this appeal, the appellant has impugned the judgment and order dated 31st January, 2011 passed by the Ad-hoc Additional Sessions Judge-I, Sangli, convicting him for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and sentencing him to suffer RI for 3 years and to pay a fine of Rs. 15,000/- and in default, to suffer RI for 6 months.

2. Factual matrix of this case is as under :

According to the prosecution, PSI Sunil Dashrath Mahadik (PW 4) received information on his mobile phone, that two persons namely, Sagar Pardeshi (appellant)-aged 23 years and Govind Jagannath Chougule (deceased)-aged 38 years, wearing blue shirt and sky colour green pant and white shirt sweater, pajama and cap respectively, were coming on a Hero Honda Motorcycle bearing No. MH-10-J-8091, from the Miraj-Pandharpur Road. The said persons were stated to be in possession of Ganja. The information also disclosed that the said persons were coming to sell the same, at Tanang Phata from Junoni, Taluka Sangola through the Miraj-Pandharpur Road. Accordingly, PSI Mahadik is stated to have written the said information on a paper in his own handwriting and thereafter, the raiding party was called to the Miraj Rural Police Station. In the Police Station, PSI Mahadik prepared a report and forwarded the same to the in-charge Police Station Officer PI Shri A. P. Desai and requested him for permission for laying a trap and also requested for supply of lacquer and seal. It is stated that PI Desai granted the said permission in writing and also handed over the seal and lacquer for the purpose of the raid. PI Desai

is also stated to have given an authority letter to PSI Mahadik for the purpose of the raid. Thereafter, PSI Mahadik asked Police Naik Yuvraj Patil to bring two panchas for the purpose of raid and also asked Police Head Constable Koli to bring a person having weights and measurement. Accordingly, two panchas namely; Gous Mohiddin Khudbuddin Pirjade (PW 5) and Anna Shankar Koli were summoned to act as panchas and for weights and measures, a person by the name Adinath Sukumar Athane (PW 2) was brought to the Police Station. PSI Mahadik disclosed the aforesaid information received by him to the said panchas and to PW 2 (Adinath Athane), who had come with the weights and measures and requested them to remain present at the raid. The said persons are stated to have given their consent for remaining present in the said raid. Accordingly, the panchas put their signature on the paper, on which information was written by PSI Mahadik, giving their consent thereon. Thereafter, PW 1-Madhukar Salunkhe along with PSI Mahadik and all the police staff gave their personal search to the panchas and in the said search, no narcotic drug or substance was found with them. Thereafter, PSI Mahadik also took search of the panchas and PW 2-Adinath Athane, and found no such narcotic drug or substance with them. Thereafter, the raiding party came out of the police

station and went near a Tata Sumo vehicle. The panchas, thereafter, took the personal search of the driver of the said vehicle as well as of the Tata Sumo vehicle and found no narcotic drug or substance either, with the driver or in the vehicle. Thereafter, the raiding party proceeded to Tanang Phata at about 4:05 p.m from the police station. It is stated that they reached Tanang Phata within ten minutes, where all of them got down and stood aside. Thereafter, PSI Mahadik laid a trap and kept a watch on the vehicles coming from the Pandharpur side. At about 4:30 p.m., one Hero Honda Motorcycle bearing No. MH-10-J-8091 with two persons sitting thereon of the above description, was found coming from the Pandharpur direction. The said vehicle was stopped. On inquiry, the person who was riding the motorcycle disclosed his name as Sagar Gorakh Pardeshi (appellant), resident of Bamnoli, Taluka Miraj and the person who was pillion rider, disclosed his name as Govind Jagannath Chougule (deceased), resident of Junoni, Sangola, District Solapur. The pillion rider Govind was stated to have one bundle wrapped in cloth in one bag. PSI Mahadik informed Sagar Pardeshi (Appellant) and co-accused Govind Chougule that they had received the aforesaid information and hence their search was required to be taken. PSI Mahadik is stated to have asked the

appellant and Govind Chougule as to whether they wanted to be searched in the presence of a Gazetted Officer or Magistrate. However, both of them declined the said request. It is stated that PSI Mahadik also asked the appellant and Govind Chougule whether they wanted to take personal search of the police staff, panchas and the measurer, but they declined to do so. Thereafter, PSI Mahadik and the police staff took personal search of the appellant and Govind Chougule. In the personal search of Govind Chougule, one mobile phone of Motorola Company was found and a bundle wrapped in cloth, was also found. In the said bundle, which was kept in a bag, dry leaves of strong smell and narrow sticks of branches of Ganja were found. PW 2-Adinath Athane was asked to measure the said Ganja, which he did, and found that there was Ganja of 2 Kgs 470 gms. Thereafter, two samples were taken in brown paper separately and the remaining Ganja was packed separately. Labels and seals were affixed on the said packets and a panchnama was drawn. Thereafter, the appellant and Govind Chougule were brought to the Police Station along with the muddemal and a complaint was lodged by PW 1-Madhukar Salunkhe as against the appellant and Govind Chougule, alleging the aforesaid offences.

3. After investigation, charge-sheet was filed as against the appellant and two others. The prosecution, in support of its case, examined as many as six witnesses; PW 1-Madhukar Salunkhe (complainant); PW 2-Adinath Athane, the person who brought the weights for measuring Ganja; PW 3-Prakash Nikam, the Police Officer, who deposited the Ganja with the Forensic Science Laboratory, Pune; PW-4 PSI Sunil Mahadik, the person who received the information and who was a part of the raiding team; PW 5-Gous Mohiddin Khudbuddin Pirjade, a panch to the seizure panchnama; and PW 6-Amar Desai, Police Inspector, in-charge of the Miraj Rural Police Station at the relevant time.

4. The defence of the appellant was of denial and false implication. The defence examined DW No.1-Jagannath Vasant Mane to show that the appellant was working in the workshop till 2:00 p.m. and had left the workshop only at 2:00 p.m. from the Siddhivinayak Petling Workshop.

5. Ms. Sawant, learned Counsel for the appellant submitted that during the pendency of the case, co-accused Govind Jagannath Chougule

and original accused No. 3 Babu Chandrappa Kaikadi (Mane) died and hence, the case proceeded only as against the present appellant. She assailed the impugned judgment and order on several grounds. Her principal submissions were; (i) that the Ganja was recovered from the bag which was admittedly held by co-accused Govind Chougule and that nothing was recovered from the appellant. She submitted that there is nothing on record to show that the appellant had knowledge of the fact, that co-accused Govind Chougule was carrying Ganja with him in his bag. She further submitted that even the offer made to the appellant and co-accused, is not in conformity with the provisions of the NDPS Act. She submitted that the mandatory provisions of Section 50 have not been complied with, inasmuch as, it was a joint offer made to the appellant and the co-accused. She relied on the judgment of the Apex Court in the case of ***Vijaysinh Chandubha Jadeja vs. State of Gujarat***¹, in support of her submission.

6. Learned A.P.P supported the judgment and order and urged that no interference is warranted.

¹ (2011) 1 SCC 609

7. Perused the papers. Admittedly, there is recovery of Ganja from a bundle wrapped in a cloth, which was kept in a bag and that the same was seized from co-accused Govind Chougule. Admittedly, nothing incriminating was seized from the appellant. There is nothing on record to show that the appellant had knowledge that Ganja was kept in the bag by co-accused Govind Chougule, nor is there any material on record, which throws light on the same. Considering the harsh punishment imposed for offences under the NDPS Act, it is incumbent for the prosecution to establish that the appellant had knowledge, that co-accused was carrying the contraband. In the present case, there is nothing to indicate that the appellant had knowledge that there was Ganja kept by co-accused Govind Chougule, in a packet in his bag. The aforesaid appeal ought to succeed on the aforesaid sole ground.

8. Considering the aforesaid, the appeal is allowed and the impugned judgment and order dated dated 31st January, 2011 passed by the Ad-hoc Additional Sessions Judge-I, Sangli in Sessions Case No. 18 of 2009 is quashed and set-aside and the appellant is acquitted of the offence, with which he is charged, if not required in any other case.

9. Appeal is accordingly disposed of.
10. The Court expresses a word of gratitude for the able assistance rendered by the learned *amicus curiae*, to espouse the cause of the appellant. The legal fees of the learned *amicus curiae* is quantified at Rs. 5000/-, to paid by the High Court Legal Services Committee.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.