

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 194 OF 2003

Jagannath S/o Nivrutti Jadhav,
Age : 57 Years, Occu. : Agril.
R/o Dharmala, Tq. Kaij,
Dist. Beed.

.. Appellant

Versus

The State of Maharashtra,
through the Police Station Officer,
Police Station Dharur,
Tq. Dharur, Dist. Beed.

.. Respondent

Shri S. S. Choudhari, Advocate for the Appellant.
Shri V. S. Badakh, A.P.P. for the Respondent/State.

**CORAM : ARUN M. DHAVAL, J.
DATE : 24TH JULY, 2017.**

ORAL JUDGMENT :-

. This is an appeal filed by the accused from Special Case No. 02 of 2001 of Additional Sessions Court, Ambajogai, who was convicted U/Sec. 20(a)(i) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short "N.D.P.S. Act") and sentenced to suffer R. I. for three years and to pay fine of Rs. 2,000/- by judgment dated 18.02.2003.

2. As per the prosecution case, P.W. No. 6 P.S.I. P. H. Giri of Dharur Police Station, Dist. Beed on 07.09.2001 received a

secrete information that, the appellant has cultivated some ganja plants in his field bearing land Sy. No. 7 at Dharmala, where there was crop of bajara. He then called two panchas, one Gazetted Officer Dr. Anantrao Kurwade and one photographer and visited the spot at Dharmala along with his staff. The appellant was called in his field and opportunity was given to the appellant to call any other Gazetted Officer. The appellant declined to call any other Gazetted Officer. Thereafter the field was inspected and fifteen (15) ganja plants of the height of one to one and half feet were found. Those were uprooted and weighed and those weighed about 1 Kg. 600 gms. Photographs of the same were taken. All the ganja plants were packed in a cloth bag and thereafter that bag was sealed and labeled. Samples of soil were also taken, the soil was also packed, sealed and labeled. Thereafter, the First Information Report Exhibit 30 was lodged and crime was registered as Cr. No. 82/2001 for the offence punishable U/Sec. 20(a)(i) of the N. D. P. S. Act and was investigated into.

3. During the course of investigation P.S.I. Giri recorded the statements of material witnesses, drew spot panchanama, collected 7/12 extracts of the land. On 12th September, 2001 seized ganja plants were sent to the office of the Chemical Analyzer through a carrier. As per the Chemical Analyzer's report received, it was confirmed that, those were cannabis plants falling U/Sec. 2(iv) of the N. D. P. S. Act. After completion

of investigation, charge sheet was submitted in the Special Court at Ambajogai.

4. The learned Special Judge framed charge at Exhibit 07 U/Sec. 20(a)(i) of the N. D. P. S. Act. The accused pleaded not guilty. The prosecution examined in all six witnesses. The defence of the accused is of total denial. The learned Special Judge accepted the evidence and convicted the appellant U/Sec. 20(a)(i) of the N. D. P. S. Act and sentenced him as referred above. Hence this appeal by the accused/appellant.

5. Heard the learned counsel for the appellant and the learned Assistant Public Prosecutor for the respondent/State. The learned counsel for the appellant relied on following facts.

- (i) There are discrepancies in the evidence of prosecution witnesses.
- (ii) Photographs were not enlarged.
- (iii) Nobody from village Dharmala was examined.

6. The learned A. P. P. supported the judgment of the Trial Court stating that, there is consistent evidence of seizure of plants from the field of the accused. The learned advocate for the appellant and the learned A. P. P. were called upon to argue on the point of cultivation of the appellant over the land in question and material regarding packing, sealing and labeling.

7. Considering the above, the points for my consideration, my findings thereon as follows :

POINTS

FINDINGS

- | | |
|---|--------------------|
| A. Whether it is proved that, the appellant had cultivated ganja plants in his field and has thereby committed offence p/u Sec. 8(b) r/w Sec. 20(a)(i) of the N. D. P. S. Act ? | In the negative. |
| B. What order ? | Appeal is allowed. |

-: R E A S O N S :-

8. The prosecution has examined in all six witnesses. They are as follows.

- P.W. No. 1 is Dr. Anant Kurwade, the Gazetted Officer.
P.W. No. 2 is Police Constable Shrikant Jadhavar.
P.W. No. 3 is Police Constable Anant Londhe.
P.W. No. 4 is photographer Balu Harke.
P.W. No. 5 is a panch witness namely Shivaji Khande/Press Reporter
P.W. No. 6 is P.S.I. Prabhakar Giri, who is the Investigating Officer.

9. There is consistent evidence on record to show that, P.S.I. Giri received a secrete information about plantation of ganja plants in the bajra crop of the accused at land Sy. No. 7 situated at village Dharmala, then he called P.W. Nos. 1 to 5 and one more panch and visited the spot. The accused was present there. After taking search of the field fifteen ganja plants were found there. These plants were uprooted and seized. Thereafter F.I.R. Exhibit 30 came to be lodged.

10. P.S.I. Giri has stated that, he had collected revenue record i. e. 7/12 extracts of the field Sy. No. 7 and those are at Exhibit 32 and 33. He had taken station diary entry Exhibit 34, which according to him was forwarded by him to superiors in compliance of sub Sec. (2) of Sec. 42 of the N. D. P. S. Act by wireless message at Exhibit 35. On 12th September, 2001 ganja plants seized were sent through carrier to the C. A. office for analysis. The C. A. report received is at Exhibit 36. A sketch map of the site was got drawn from the Tahsil Office and it is at Exhibit 38.

11. After careful scrutiny of the evidence on record, I find substance in the argument of the learned advocate for the appellant that, there is basic lacuna that, no person from village Dharmala was examined to show that the field searched by the team was belonging to the accused/appellant. There was neither any revenue officer present to confirm that the said field was

bearing Sy. No. 7 and it was belonging to the accused, nor any neighbour was examined.

12. The 7/12 extract at Exhibit 33 shows that, field Sy. No. 7 belongs to five persons. The appellant is one of them. Other four are his brothers, each holding land admeasuring 1H 57R. In absence of evidence of revenue officer or any neighbouring field owner, the evidence of P.W. Nos. 1 to 6 cannot be accepted that the field visited by prosecution witnesses was belonging to the accused and was in his possession and cultivation.

13. Another major lacuna is that, there is no reliable evidence about the cultivation of ganja plants. The cultivation of plants contemplates sowing of seeds in the field, and natural sprouting of plants is not cultivation. The presumption can be drawn that the accused had cultivated the ganja plants, if he is the cultivator of the land and large quantity of ganja plants are found in his field. Admittedly, in the field of 1H 57R major crop of bajra was taken and only fifteen ganja plants were found. In similar circumstance, in a case of Alakhram Vs. State of U. P. reported in (2004) 1 SCC 766, the Apex Court has observed as under :

"In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant. There must be supporting evidence to prove that the accused cultivated the plant and it is not enough that few plants were found in the property of the accused. It is quite

reasonable to assume that sometimes the plants may sprout up, if seeds happen to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation."

14. Besides above, I also find that, there is no proper evidence regarding packing, sealing and labeling of the seized muddemal property. Many witnesses have not deposed about these aspects, but vaguely stated that, the plants were seized.

15. There is also no proper evidence of safe custody of seal, after the panchanama was drawn, making it inaccessible to the Investigating Officer. There is no reliable evidence to show that the seized muddemal property was kept in safe custody till it was forwarded to the C. A. office. The seizure took place on 07.09.2001 and muddemal property was sent to the C. A. on 12.09.2001. The carrier has not been examined. No witness has deposed about packing, sealing and labeling of the ganja plants. The panch witness Shivaji Khande has not stated that, ganja plants were packed in cloth bag, sealed and labeled in his presence. The copy of malkhana register is not produced.

16. In the circumstances, the conviction and sentence of the appellant/accused is not sustainable.

17. Hence the appeal is allowed. The conviction and sentence of the accused/appellant in Special Case No. 02 of 2001 passed by

Special Judge, Ambajogai dated 18.02.2003 is hereby set aside.
The appellant is acquitted of the offence punishable U/Sec. 20(a)
(i) of the Narcotic Drugs and Psychotropic Substance Act, 1985.

18. His bail bonds stand cancelled.

[ARUN M. DHAVAL, J.]

bsb/July 17