

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.419 OF 2003

The State of Maharashtra,
Through Police Station Officer,
Ardhapur Police Station,
Tq-Ardhapur, Dist-Nanded.

...APPELLANT

VERSUS

1) Dyandev s/i Yadav Nikalje,
Age-45 years, R/o-Budhnagar,
Jintur, Dist-Parbhani,
[Appeal abated as against
Respondent No.1 as per Court
Order dated 20th August, 2007]

2) Ashok s/o Narsu Kakde,
Age-35 years, Budhnagar,
Jintur, Dist-Parbhani.

...RESPONDENTS

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Mr.P.G. Borade A.P.P. for Appellant-State.
Appeal abated as against Respondent No.1 as
per Order dated 20th August, 2007.
Mr.P.P. Mandlik Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
A.M. DHAVALA, JJ.**

DATE : 6TH JANUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is filed by the State challenging the Judgment and order dated 13th February, 2003 passed by II Ad-hoc Additional Sessions Judge, Nanded in Special N.D.P.S. Case No.11 of 2002, thereby acquitting the Respondents/original accused - for the offences punishable under Sections 20(b)(ii) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (For short "N.D.P.S. Act").

2. Before the trial Court, there were in all three accused and the trial Court has acquitted all the three accused for the offences with which they were charged. The State has filed Appeal challenging the acquittal of original accused No.1 - Dyandev Yadav Nikalje and accused No.2 - Ashok s/o Narsu Kakde. Due to demise of accused No.1/ Respondent No.1 - Dyandev Yadav Nikalje, Appeal

against him stands abated as per Order dated 20th August, 2007. Now the challenge in this Appeal is restricted to the acquittal of accused No.2/Respondent No.2 - Ashok Narsu Kakde.

3. The prosecution case, in nut-shell, is as under :-

(A) It is the case of the prosecution that on 11th July, 2002 at about 14.00 hours the complainant Ramrao Patolba Gadekar, A.P.I. Police Station, Ardhapur, lodged a written report with Ardhapur Police Station against the accused alleging that on 11th July, 2002 he was present in the Police Station. At about 10.35 hours he received a message through a phone call that on Ardhapur Bus Stand near Control Room two persons wearing white shirt and yellowish trouser, aged 35 years, were sitting with suit-case and hand-bags. They had Ganja with them. They were waiting for a bus towards Wasmal. Having received the

information, complainant Ramrao Gadekar made a phone call to Deputy Superintendent of Police, Nanded. He then took entry in the Station Diary Register. He sent Police Constable Mundhe to call Tahsildar Shri Jakkal to Tahsil Office, Ardhapur. He sent police constable to bring weights and balance. Police Constable Shakil was sent to bring cloth bags and a photographer. He asked Head Constable Lashkare to bring panch witnesses. The complainant gave all the orders in writing. After some time the orders issued by him were complied. The complainant made a Station Diary entry No.25 in that respect.

(B) Then along with Tahsildar Shri Jakkal, police staff, panch witnesses, photographer, the complainant started at about 11.05 hours on foot towards Ardhapur Bus Stand. The raid was conducted at 11.10 hours. Two persons were found near S.T. Control Room. They told their names as Dyandev Yadav Nikalje and Ashok Narsu Kade, The

complainant introduced himself and his staff to those persons. They also offered their search. The complainant informed that the search of the bags was to be taken. The complainant asked them whether they wanted their search in the presence of the Gazetted Officer or a Magistrate. The accused expressed their willingness to have their search before the Gazetted Officer. Then the complainant introduced the Gazetted Officer to those persons.

(C) In the presence of Tahsildar - Taluka Magistrate Shri K.B. Jakkal, the suit-case and the bags were searched. In the possession of Dyandev, one suit-case and one bag of rexine was noticed. On search in the suit-case, 6 1/2 Kg. Ganja with green leaves, seeds and sticks and in the rexine bag 3 Kg. 100 Grams Ganja, green in colour, sticks were found. In possession of Ashok Narsu in the bag Ganja with green leaves, sticks weighing 5 Kg. and 500 Grams was found. The samples of 100 Grams

each were taken from the seized bags and the suitcase. There were total 9 samples. A.P.I. seized the Ganja under panchnama. On enquiry with them the accused told that Ganja was purchased by them from Mangulal @ manguram Pawar, R/o-Malkapur, Dist-Nizamabad(A.P.) and one Harun Choudhari R/o-Mantha had asked to bring it.

(D) On the basis of the above, an offence vide Crime No.35 of 2002 was registered and investigated. After completion of investigation, police filed charge-sheet against the accused. The charge was framed against the accused at Exhibit-11. The accused pleaded not guilty to the said charges.

4. After recording the evidence and conducting full fledged trial, the trial Court acquitted all three accused from the offences with which they were charged, as stated herein above in Para-1 of the Judgment. Hence this Appeal is filed

by the State challenging the acquittal of Respondent Nos.1 and 2. As already observed, Appeal against Respondent No.1 stands abated as per order passed by this Court on 20th August, 2007. Thus, in this Appeal the challenge is restricted to the acquittal of Respondent No.2 - Ashok s/o Narsu Kakde.

5. Heard learned A.P.P. appearing for the Appellant-State and learned counsel appearing for Respondent No.2, at length. With their able assistance, we have carefully perused the entire original record including the notes of evidence, so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

6. We have carefully perused the evidence of all the prosecution witnesses and in particular, evidence of PW-5 Govind Vithal Shingare, a panch witness and PW-6 Ramrao Patilba Gadekar, an

Investigating Officer. PW-5 Govind admitted in cross-examination that all the writing work was completed by the police in the police station itself. PW-5 Govind admits that seizure panchnama was prepared in the police station itself. PW-5 Govind specifically admits that the sample was taken in the police station itself, and not on the spot of incident i.e. S.T. Bus Stand. Upon careful perusal of entire evidence on record it appears that even the spot panchnama was prepared in the police station itself. The prosecution has not brought on record any evidence showing that the bags from which alleged Ganja was seized, were really belonging to the accused persons. It is pertinent to note that the Investigating Officer PW-6 Ramrao Patilba Gadekar, specifically admitted in his cross-examination that the suit-case and the bags were kept on the ground in the premises of S.T. Stand. Thus, it is clear that no attempt was made by the Investigating Officer to find out whether the said suit-case and bags were really

belonged to the accused.

7. Upon careful perusal of the evidence of Investigating Officer PW-6 Ramrao Patilba Gadekar, in cross-examination he specifically admitted that he formed his opinion that it was a credible information. but he did not mention in the contents of the Station Diary that he formed his opinion about its credibility. He did not send any written report regarding information received, to his superior. PW-6 Ramrao Patilba Gadekar further stated that Tahsildar was not a raiding party member, but he further admits that Tahsildar had accompanied the raiding party from the police station itself. He further admits that he did not affix another seal on the samples and seized Ganja of police station officer. He admits that the panch witnesses were present with him after preparing the seizure panchnama till the preparing of panchnama of spot. He further admits that the sample packets were reached to Chemical Analyzer's

office on 16th July, 2002.

8. Thus, from the perusal of the evidence of PW-6 Ramrao Patilba Gadekar, it is clear that secret information received by him was not communicated to the superior officers. Though Tahsildar was not a member of raiding party, he accompanied with the raiding party from the police station itself. Though the articles were seized on 11th July, 2002, the same were reached in the office of the Chemical Analyzer on 16th July, 2002. The prosecution has not brought on record any evidence showing that from the date of seizure till the articles were reached in the office of the Chemical Analyzer, those were kept in properly sealed condition. The prosecution has not brought on record whether Investigation Officer was authorized officer under the provisions of Section 42 of the N.D.P.S. Act to seize the said articles, register the offence and take further procedural steps. Any such Notification in that

respect is not brought on record by the prosecution.

9. The trial Court has properly considered all the evidence brought on record by the prosecution and observed that the place of preparing panchnama of the alleged seizure was not proved by the prosecution. It is further observed by the trial Court that the panch witness in his cross-examination stated that Ganja was seized in the police station, which is contrary to the case of the prosecution, as the police officer stated in his evidence that Ganja was seized near S.T. Control Room. The trial Court has further observed that the version of the police officers in that respect cannot be believed in view of the contrary circumstances. The trial Court has rightly observed that no independent witness like another panch and photographer were examined by the prosecution and non-examination of such important witnesses on the part of prosecution certainly

raises a doubt as regards the genuineness of the prosecution case. Considering all the evidence on record, the trial Court has acquitted all the accused persons from the charges with which they were charged.

10. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record. The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such. The view taken by the trial Court is a plausible view.

11. In the light of discussion in the foregoing paragraphs, we are not inclined to cause and interference in the impugned Judgment and

order of the acquittal. Hence the Appeal stands dismissed.

[A.M. DHAVALA, J.]

asb/JAN18

[S.S. SHINDE, J.]