

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.755 OF 2015**

1] U. Venkatramana Narayan	)	
Age: 30 years, Occ: Nil	)	
	)	
2] Vijaydurga U Venkatramana	)	
Age: 27 years, Occ: Household	)	
	)	
3] E. Laxmi Narayanrao,	)	
Age: 42 years, Occ: Household	)	
	)	
All are residing at Nerdol,	)	
Y.S. Colony, 140/7, Taluka	)	
District West Godavari	)	
Andhra Pradesh	)	
	)	
4] S. Satyavati Raju,	)	
Age: 52 years, Occ: Household	)	
Residing at Nimraj Palam,	)	
Taluka Nerdol, District West	)	
Godavari, Andhra Pradesh	)	
(At present accused in Nashik	)	
Road Central Prison, Nashik)	)	 Appellants. (Original Accused)

V/s

The State of Maharashtra,	)	
Through Yeola City Police	)	
Station	)	 Respondent.

Ms. Vrushali Maindad, Legal Aid appointed Advocate for the Appellants.

Mr. S.R. Agarkar, APP for the State.

CORAM: NITIN W. SAMBRE, J.

Judgment reserved on 19/08/2020

Judgment pronounced on 11/09/2020

JUDGMENT:

1] Present appeal is by the Accused persons against their conviction in Special Case (NDPS) No.03 of 2012. By Judgment dated 19/09/2014, the learned Sessions Judge, Niphad convicted the present appellants/accused persons for the offence punishable under Section 20(b)(ii)(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”) and sentenced them to suffer rigorous imprisonment for 10 years each and to pay fine of Rs 1,00,000/- each and in default of payment of fine further rigorous imprisonment of six months each is ordered.

Appellants are also convicted for the offence punishable under Section 22 (c) of the NDPS Act and sentenced to suffer rigorous imprisonment for ten years each and to pay fine of Rs 1,00,000/- each and in default of payment of fine further rigorous imprisonment of six months each is ordered.

Both these sentences have been ordered to run concurrently.

2] Facts as are necessary for deciding the present Appeal are as under:-

3] On 27/03/2012, P.W. 8 – Shravan Sonawane, Police Inspector Yeola City Police Station, received an information from secret source that at Vinchur-Choufuli, a man and three women who came from Andhra Pradesh are carrying Ganja. Accordingly, after having taken station diary entry, he informed the same to his superior.

4] He accordingly gave written order to Police Constable Shivaji Ashok Shinde i.e. P.W. 7 so as to secure presence of one lady panch vide communication at Exhibit-47. He has also given written order to Police Constable Kedare to get photographer and one weigh man with weigh scale vide Exhibit-48. He accordingly issued written orders to Police Sub-Inspector P.W. 1 – Aher to call interpreter who is well versed in Telgu language as the Accused were from Andhra Pradesh. He thereafter gave written order to Constable B.G. Shinde asking him

to prepare for the raid as is reflected in Exhibit-50. Accordingly, he has called panchas, photographer, one weigh man and interpreter and Police Constables to his Chamber and informed them about the raid to be carried out and obtained written consent of panchas and interpreter which is at Exhibit-51. After obtaining written consent of the photographer i.e. P.W.6 – Prashant Shivaji Kalankhe which is at Exhibit-52, all present have body searched with each other. When they reached at the spot of the incident, they noticed presence of certain people, out of them three were women and a man having one bag each on their body and five bags which were placed in front of them. After confirming identity of four persons i.e. Appellants through interpreter, an inquiry was made through interpreter as to the contents of the bags to which Appellants/Accused replied that same contains Ganja. Accordingly same was seized after giving intimation about their raid under Section 50 of NDPS Act vide Exhibit-53. After weighing the same, samples of 100 gms each were drawn from seven bags which were sent for chemical analysis to Forensic Science Laboratory vide Exhibit-57 and report of seizure of muddemal was forwarded to Magistrate under Section 52(A) vide Exhibit-58. The photos of the entire incident were taken which are at Exhibits 32 to 39

and after receipt of the Chemical Analyser's Report-Exhibit-16, having noticed that content seized from the Appellant was Ganja i.e. 'Narcotics' within the meaning of Section 2 (iii)(b) of the NDPS Act, Accused were arrested vide Exhibits 59 to 63. The aforesaid procedure was carried out pursuant to the complaint lodged by P.W.1 – Prakash Aher, Assistant Police Sub-Inspector who has proved the complaint Exhibit-18. According to him C.R. No.30/2010 was registered for the offence punishable under Sections 20 and 22 of the NDPS Act.

5] The appellants/accused accordingly were chargesheeted for the aforesaid offences vide Exhibit-9. As the appellants/accused pleaded not guilty, trial against them commenced.

6] In support of the prosecution case, prosecution has relied on the testimony of P.W. 1 – complainant Prakash Aher, ASI examined at Exhibit-17, who was a member of the raiding party and who has proved the complaint Exhibit-18. His supplementary statement was recorded on 07/04/2012 wherein he stated that the investigation was carried out through interpreter Shatrughna Kailas Goad. Testimony

of P.W. 2 - Rafik Shaikh who is examined at Exhibit-20 is relied upon so as to prove panchanama Exhibit-21 of the entire raid and the seizure of NDPS goods. P.W. 3 – Deepa Patel, who is examined at Exhibit-23, acted as an interpreter whereas P.W. 4 – Devidas Patole who is examined at Exhibit-24, claimed to be the photographer working in a photo studio, so as to prove the photographs brought on record at Exhibits 25 to 27. At Exhibit-28, P.W. 5 – Madanlal Jaju is examined so as to prove Exhibit-30 viz photographs and weight of the commodity. P.W. 7 – Shivaji Shinde, Police Constable is examined at Exhibit-40 in support of seizure and calling of lady pancha. P.W. 8 – Shravan Sonawane, a Gazetted Officer, is examined at Exhibit-46. Since the learned Special Court found testimony of the witnesses reliable, convicted the accused. As such, this appeal.

7] The learned Counsel for the Appellant Ms. Vrushali Maindad, appointed through Legal Aid, would urge that the Accused herein are the permanent residents of Andhra Pradesh and could understand only Telugu language. According to her, the Accused persons do not know Hindi language and even they are unable to read and write. That being so, it was incumbent on the part of P.W.1 i.e. complainant who

was a part of raiding party, so also P.W. 8 Gazetted Officer who is also Police Inspector to explain the Accused their lawful right of getting them searched before the Gazetted Officer or right to ask for their search before the Magistrate. So as to substantiate her contention, she has relied upon the Constitution Bench Judgment in the matter of *State of Punjab Vs. Baldev Singh* [(1999) 6 SCC 172] so as to claim that compliance of the provisions of Section 50 is mandatory and non-compliance thereof vitiates the trial and as such, acquittal needs to be ordered. Her further contention is, P.W. 3 – Deepa Patel, an interpreter, who is the prosecution witness has put to the accused evidence adverse against them while recording statement under Section 313. As such, according to her, whether prosecution witness has correctly, interpreted and put to the Accused the evidence adverse against them and what was made available to the Special Judge to confirm such narration cannot be inferred. She would further urge that the said default on the part of the prosecution has also vitiated the trial and as such, she would urge that acquittal is warranted.

8] Per contra, Mr. S.R. Agarkar, learned APP supports the

judgment impugned and submits that Exhibit-53 depicts compliance of Section 50 of the NDPS Act. According to him, even if P.W. 1 a member of the raiding party or P.W. 3 – interpreter has not stated anything about compliance of Section 50, testimony of P.W. 8 and fact that Exhibit-53 was received by the accused persons depicts sufficient compliance of Section 50. According to him, accused were arrested red handed and that being so Chemical Analyser's Report supports the case of the prosecution. As such, he sought dismissal of the appeal.

9] Considered rival submissions.

10] P.W. 1 – Prakash Aher, who was a member of raiding party , was examined at Exhibit-17. He has deposed that while working as an ASI, upon instructions of Investigating Officer P.W. 8, on 27/03/2012, he called P.W. 3 – Deepa Patel, an interpreter. According to him, alongwith interpreter, photographer, P.W. 8 - Police Inspector, panch witness, he reached the spot of incident and noticed that accused persons were standing and were having one bag each. Another five bags were kept on the ground in front of these accused. As such, the accused were caught on suspicion and upon inspection of their

baggage, ganja was noticed in seven bags which were seized along with two mobile phones. The said ganja was weighing about 56 kg 700 grams which was seized by P.W. 8 alongwith two mobile instruments. He has further stated that from each of the bags, 100 grams of ganja was drawn in two samples. Accordingly, he lodged a complaint-Exhibit-18. He further deposed that two interpreters who were with them, asked the accused in Telgu language as to from where they had come and accordingly same was translated in Marathi by the interpreters. In his cross-examination, he has not stated anything about whether interpreter has given any understanding to the accused persons about their lawful rights of getting searched as per Section 50 of the NDPS Act i.e. imperative act on the part of the police officer to apprise the accused person about his intention to search body of the accused and, if so, accused has a right to get searched before the Gazetted Officer or Magistrate.

11] P.W. 2 – Rafik Shaikh who is examined at Exhibit-20 has proved seizure of the contraband and drawing of sample through panchanama-Exhibit-21. Nothing could be extracted from this witness so as to demolish the prosecution case. However, though

panchanama-Exhibit-21 dated 27/03/2012 about seizure speaks of the entire procedure followed, there is no mention about compliance of Section 50 of the NDPS Act i.e. lawful rights of the accused persons about search and seizure

12] P.W.3 – Deepa Patel, who was examined at Exhibit-23 as prosecution witness, an interpreter, has deposed that she was a part of raiding party and on instructions of P.W. 8 – Shravan Sonawane, Gazetted Officer, she has asked names of the accused persons in Telgu and translated the same. However, she has not disclosed as to whether there was compliance of Section 50 of the NDPS Act as to the lawful rights of the accused persons about search.

13] P.W. 4 - Devidas Patole who was examined at Exhibit-24 has proved the photographs which are at Exhibits 25 to 27. P.W. 5 – Madanlal Jaju who is examined at Exhibit-28 has proved that he had carried out weight of the contraband which was around 57 kg. In his testimony photographs-Exhibit-30 collectively placed on record were also proved. P.W. 6 – Prakash Kalankhe, a photographer who is examined at Exhibit-31 also proved the photographs-Exhibits 32 to 39.

14] P.W. 7 – Shivaji Ashok Shinde, Police Constable who is examined at Exhibit-40, has proved the letter issued for calling lady pancha at Exhibit-41. He being a member of raiding party deposed on the line of P.W.1 – Prakash Aher.

15] P.W. 8 – Shravan Sonawane who was examined at Exhibit-46, has deposed about preparation of raid. According to him, lady pancha was summoned vide letter Exhibit-47, photographer vide Exhibit-48, interpreter through P.W. 1 – Prakash Aher vide Exhibit-49 and instructed Constable B.G Shinde for preparing for the raid vide Exhibit-50. He has also proved written consent of panchas-Exhibit-51 so as to be the part of the raid and consent given by photographer Prashant at Exhibit-52. According to him, after having carried out the raid at about 2.10 P.M. at Vinchur-Choufuli, they noticed accused persons with contraband. After having confirmed their names through the interpreter, he claimed that the accused disclosed contents of their belongings as ganja. He further deposed that he issued notice under Section 50 of the NDPS Act to accused persons i.e. Exhibit-53 and through interpreter, he has asked the accused persons whether they

are ready to give their body search and search of bags in front of them. According to him, he had also put to the accused persons through interpreter that if they desire they can have search of their bags through another Gazetted Officer. According to him, through interpreter, appellants/accused expressed their no objection for the search and accordingly in the presence of two panchas, lady police constable Smt. Aher took search of three lady accused i.e. Accused Nos. 2 to 4 whereas P.W. 8 took search of accused No.1 – U. Venkatramana.

He further admitted in his cross-examination that he is aware of the fact that appellant Nos. 1 to 4 do not know any other language than Telgu. He has also admitted that he has not taken entry below panchanama at Exhibit-21 stating that the contents of panchanama were explained to accused Nos. 1 to 4 in Telgu through interpreter. The suggestion that he has not complied with the mandate of Section 50 of the NDPS Act was denied by him. However, it is required to be noted that Exhibit-53 does not bear the signature of either interpreter or that of the accused persons.

16] As such, the contention that there is no compliance of Section 50 of the NDPS Act was pressed by the learned Counsel for the Appellant so as to make out a case for acquittal.

17] At this stage of the Trial, the Court, even if has looked into the evidence of the prosecution, wishes not to comment anything on the compliance of the provisions of Section 50 particularly for the following reasons.

18] While scanning the record available with the Court, what can be noticed is, P.W. 3 – Deepa Patel who was examined at Exhibit-23 was summoned by P.W. 8 – Investigating Officer, a Gazetted Officer through P.W.1, who acted as an interpreter as there was advance information (secret) that the accused persons are from Andhra and the aid of the interpreter will be required. As observed hereinabove, it has come in the evidence of prosecution witness i.e. interpreter that she has inquired about names of the accused persons and accordingly her statement was recorded by P.W.8 pursuant to the provisions of Section 162 of the Act as prosecution witness.

19] As far as evidence, as was recorded by the Sessions Court in the aforesaid NDPS Special Trial is concerned, same is governed by the provisions of Chapter XXIII of the Code of Criminal Procedure i.e. Evidence in Inquiries and Trials. Section 279 of the Code of Criminal Procedure provides for interpretation of evidence to accused or his pleader. Section 279 reads thus :-

“279. Interpretation of evidence to accused or his pleader.-(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.”

Sub-section (1) of Section 279 provides for evidence to be interpreted to the accused in open court in language understood by him while recording evidence in the language not understood by the accused. Sub-section (2) of Section 279 provides that if the accused appears by pleader and the evidence is given in a language other than the language of the Court which is not understood by the pleader then it shall be interpreted to such pleader in that language.

20] As such, from the evidence of P.W.8 so also since beginning it is the case of the prosecution that services of P.W.3 were taken by Investigating Agency from the inception i.e. from the stage of raid and has also examined P.W.3 – Interpreter in support of the prosecution case as the accused were knowing only Telugu language and no other language. As a consequence of above, if this Court appreciate the role of interpreter in the investigation, so also during trial, she has participated and testified as prosecution witness. Hearing of a trial contemplates evaluation of evidence of witnesses including prosecution witness.

PW-3, prosecution witness, as is observed herein-above, also participated in investigation. In other words, she aided the investigating agency so as to effectively communicate between the police machinery and the accused person. Once she was examined as prosecution witness, whether the Sessions Court should have taken her services as an interpreter is required to be looked into. The interpreter is one who translates orally the words of persons speaking different languages. He is a person sworn by the Court to interpret the testimony of the witness, when given in language other than that commonly used by the Court or understood by the accused persons. As such, interpreter is a witness and can be distinguished from the person whose testimony he or she interprets. As such, once PW-3 has acted as interpreter for prosecution and also supported the prosecution story, the Sessions Court should have in such an eventuality, appointed an independent interpreter other than P.W.3 to explain the evidence to the accused persons against them.

That being so, the least that was expected of the Sessions Court was to take services of independent interpreter and explain the evidence to the accused persons in Telgu language as they were

knowing the said language only. There is no material on record to infer that either P.W.3 or any other interpreter was present during the course of recording of evidence who understands Telgu, Marathi and English language. As such, the interpreter could have translated the evidence recorded to the accused persons. It has not come on record that pleader of the accused was knowing Telgu language so also language of the Court. As such, violation of Section 279 of the Code of Criminal Procedure could be inferred as evidence was never put to accused persons in Telgu language. However, non-compliance of Section 279 of Cr.P.C., cannot result in acquittal of the accused as the said provision appears to be directory in nature as non-compliance thereof cannot be termed as illegality but mere irregularity.

21] The provisions of Chapter XXIII of the Code of Criminal Procedure further provides under Section 281 as regards record of examination of accused and section 282 Interpreter to be bound to interpret truthfully. Section 313 of Chapter XXIV of the Code of Criminal Procedure provides for power to examine the accused. While examining the accused under sub-section (5), it is open for the Court to take help of the prosecutor and Defence Counsel in preparing

relevant questions which are to be put to the accused and the Court may permit filing of Written Statement by the accused as sufficient compliance of Section 313.

22] Admittedly, in the case in hand, evidence is not recorded in Telgu language or interpreted to the accused in Telgu language whereas same is in the language of the Court i.e. English. As observed hereinabove, though the evidence was never put to accused by the interpreter much less by the P.W.3 in the language understandable by the accused persons i.e. Telgu. Apart from above, interpreter was examined as prosecution witness and as such supported the case of the prosecution. From her evidence however while recording statement of the accused under Section 313, it is not clear as to whether the entire evidence was explained to the accused, though at the end of the statement of the accused persons recorded under Section 313 there is certificate signed by P.W.3. However, P.W.3 being prosecution witness, in my opinion, could not serve the character of a neutral interpreter as she was examined as prosecution witness and has participated in the process of raid. Apart from above, it is also required to be noted that coupled with non-compliance of Section 279

of the Code of Criminal Procedure as observed hereinabove with that of the role played by P.W.3 as interpreter in assisting the Court in recording the statement of the accused under Section 313, has resulted in committing material irregularity in the trial.

That being so, without dwelling upon the controversy as to whether there is non-compliance of Section 50 of the NDPS Act in the matter of search and seizure and keeping the said issue open to be re-agitated before the Trial Court, the case for remand from the stage of recording of the statement under Section 313 of the Code of Criminal Procedure is made out. In my opinion, learned Sessions Court is now required to take services of an independent interpreter who understands the language of the Court i.e. English so also Marathi and Telgu and who will be in position to interpret the entire evidence to the accused and also assist the Court in recording statement of the accused persons under Section 313 of the Code of Criminal Procedure.

23] As such, Judgment impugned convicting the accused persons is hereby quashed and set aside and Trial stood restored to the file of the learned Special Judge, Niphad. Special Judge, Niphad shall, within

two weeks from the date of receipt of the judgment of this Court, appoint an independent interpreter who shall explain the entire evidence, recorded during the trial to the accused persons in the language understandable to them i.e. Telugu in the presence of their pleader so also prosecutor. Such narration should be by the interpreter in accordance with the provisions of Section 282 of the Code of Criminal Procedure and the Court shall ensure stringent compliance thereof. The interpreter thereafter shall on day-to-day basis attend the Court and assist the learned Special Court in disposing of the trial expeditiously. The Special Court shall conclude the trial in any case within three months from the date of pronouncement of this judgment.

24] The remuneration/honorarium payable to the independent interpreter whose services are to be summoned by the Court shall be paid from the Account of the Legal Services Authority.

25] With the above observations, appeal is partly allowed.

(NITIN W. SAMBRE, J.)