

HIGH COURT OF CHHATTISGARH AT BILASPUR**ACQA No. 119 of 2009**

State of Chhattisgarh, through the District
Magistrate, Kabirdham, Chhattisgarh.

---Appellant

Versus

1. Ghurwa S/o Jugut, Caste Patel, Aged 56 years, R/o
Village Lata, Thana Bodla, District Kabirdham,
Chhattisgarh.
2. Januram S/o Jugut, Caste Patel, Aged 40 years,
R/o Village Lata, Thana Bodla, District
Kabirdham, Chhattisgarh.

--- Respondents

For Appellant/State :- Mr. Ravi Bhagat, Dy. G.A.

For Respondents :- Mr. Sourabh Sahu, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/01/2021

1. This acquittal appeal is directed against the
judgment of acquittal dated 13/06/2006 recorded
by learned Special Judge (NDPS Act) in Special
Case No. 06/2006 acquitting the respondents
herein from charges punishable under Section
20(a) of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter, 'the NDPS Act').

2. The respondents herein were acquitted on the following facts :-

2.1. That, on 20/10/2005, A.K. Banjare (PW-10) who is the SI of the Excise Department received an information regarding illegal cultivation of cannabis plants in the field of the respondents and reduced the same in writing in the prescribed form of the Excise Department and in compliance of Section 42(2) of the NDPS Act forwarded the same to his superior vide Memo (Ex. P/10) and proceeded for the spot.

2.2. Having reached over the spot, the Investigating Officer (PW-10) called the respondents and served them with notice (Ex. P/8) and informed them about their right before search. The Investigating Officer gave his personal search along with his staff to the respondents vide Ex. P/9 and thereafter, entered into the field wherein he seized 24 plants of cannabis and seizure memo was prepared (Ex. P/1). The measurement of plants was done vide Ex. P/3 and those were sealed and

a memo of specimen seal was prepared as Ex. P/6. Spot map vide Ex. P/7 had been prepared and respondents were taken into custody and information to that effect was given to the relatives of the respondents vide Ex. P/19. An information regarding the seizure and arrest was given to the District Excise Officer vide Ex. P/21.

2.3. The revenue records of the questioned field had been collected under Ex. P/11 to Ex. P/14. The seized cannabis plants were sent to the Forensic Science Laboratory for chemical examination vide Ex. P/17 and having found the positive chemical examination report vide Ex. P/23, the respondents had been put to trial and they had been charged for the commission of offence punishable under Section 20(a) of the NDPS Act.

2.4. The respondents abjured their guilt and entered into defence. Learned Special Judge, after appreciating the oral and documentary evidence on record, did not accept the version of the prosecution and acquitted the respondents holding that the prosecution has failed to prove that respondents have committed

the offence under Section 20(a) of the NDPS Act beyond doubt. Now, questioning the judgment of acquittal recorded by learned Special Judge, this acquittal appeal has been preferred by the State.

3. Mr. Ravi Bhagat, learned Deputy Government Advocate for the appellant/State, would submit that learned Special Judge is absolutely unjustified in acquitting the respondents as the contraband/cannabis plants were seized from the field of the respondents and after complying all formalities, it was sent to the Forensic Science Laboratory wherein it was found with narcotic drugs, as such, on the basis of the statement of the Investigating Officer (PW-10), the conclusion ought to have been recorded by learned Special Judge and further he has failed to appreciate the provisions of Section 35 and 54 of the NDPS Act which is available against the respondents. Therefore, the impugned judgment acquitting the respondents recorded by learned Special Judge deserves to be set aside.

4. Mr. Sourabh Sharma, learned counsel for the respondents, would submit that it was incumbent

upon the prosecution to prove that those cannabis plants were planted by the respondents herein and they had not sprouted naturally in light of the decision rendered by the Supreme Court in **Alakh Ram v. State of U.P.**¹.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. Admittedly, in the instant case, the respondents were prosecuted for offence punishable under Section 20(a) of the NDPS Act as 24 plants of cannabis weighing 43.200 kgs were seized. In order to constitute offence punishable under Section 20(a) of the NDPS Act, it must be proved by the prosecution that the accused persons have actually cultivated the prohibited plants and it must further be proved that the land on which the cannabis plants were cultivated was exclusively held by the accused persons and they had exclusive right over it.

7. In the matter of **Alakhram** (supra), similar question came up for consideration before the

¹ (2004) 1 SCC 766

Supreme Court wherein in paragraphs 5 and 6 it has been as under :-

"5. In the instant case, one witness was examined to prove the nature of the offence committed by the accused. It was PW 1 who accompanied the police officers to the appellants' field. The evidence given by PW 1 is to the following effect :

"Alakh Ram is a farmer. I do not know the number of those fields. I do not know the number of that field in which ganja was sown. I do not know as to who had cultivated the plants of ganja. That field is irrigated and Madho also works in that field. Neither have I seen anyone planting the ganja plants nor do I know when was it planted."

6. The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the ganja plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence, either oral or documentary, to show that the appellant has a right over the property from which the ganja plants were recovered. There is no evidence that the appellant cultivated these ganja plants. Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that these plants had been the result of cultivation. They may have sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of ganja plants by the appellant and the

Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant."

8. Reverting to the facts of the present case in light of the proposition of law laid down by the Supreme Court in Alakhram (supra), it is quite vivid that though the respondents were charged for offence punishable under Section 20(a) of the NDPS Act and it is the case of the prosecution that 24 plants of cannabis weighing 43.200 kgs were seized from the possession of the respondents, but the prosecution has failed to plead and establish that the field where the cannabis plants were planted were in the exclusive possession of the respondents and they had exclusive right over the property from which the plants were recovered. There is no evidence on record at all to show that the respondents cultivated the cannabis plants and the ownership of the land from which the plants were seized is also in serious dispute which the Special Court has also recorded. The prosecution must have established that the plants have been planted/cultivated by the respondents which they have miserably failed.

They must also have ruled out that the said cannabis plants did not sprout out by natural process. As such, learned Special Judge has rightly acquitted the respondents for offence punishable under Section 20(a) of the NDPS Act in which I do not find any perversity or illegality.

9. Accordingly, the instant acquittal appeal is dismissed finding no merit.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet