

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 525 OF 1997

The State of Maharashtra	 Appellant
v/s.	
Raghunath @ Baban Narayan Chorage	 Respondent

Mr. S.V. Gavand, APP for the Appellant – State.
Mr. Rahul S. Kate for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 16th SEPTEMBER, 2021.

ORAL JUDGMENT :-

. This is an Appeal filed by the State against the order of acquittal dated 03/04/1997 in N.D.P.S. Sessions Case No.9/1996. By the impugned judgment, the learned Special Judge has acquitted the Appellant of the offences under Section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances (ND&PS) Act.

2. It is the case of the prosecution that on 27/12/1995, PW4 – PSI Ajit Joshi, Vigilance Branch, Pune City had received information that one Raghunath Chorgage, the Respondent herein was coming from Katraj to Pune via. Satara Road by his commander jeep bearing No.MH-12/P-9094, was in possession of Ganja. PW4 – Ajit Joshi reduced the

information in writing and submitted an independent report to the Inspector Patil. It is the case of the prosecution that after securing necessary permission/authorization from Inspector Patil, PW4 secured presence of two pancha witnesses and proceeded to Swargate Police Station. Personal search of pancha witnesses and other members of the raiding party were taken. The raiding party reached Swargate Police Station at about 04:00 p.m. and a report was submitted indicating that PW4 – PSI Ajit Joshi was proceeding to effect the raid. After submitting the said report, the raiding party proceeded to Satara Road. The two teams of the raiding party waited near Hotel Shilpa. After some while, the members of the raiding party saw a jeep bearing no. MH-12/P-9094 coming from Katraj side. The said jeep was intercepted by the raiding party at about 04:45 p.m. The driver of the jeep disclosed his name as Raghunath @ Baban Narayan Chorage. The object of the trap was narrated to the driver of the jeep i.e., the Respondent herein. He was also apprised of his right under section 50 of the NDPS Act. After complying with all mandatory provisions of the Act, the jeep was searched and one gunny bag containing Ganja was recovered. Sample was taken from the total quantity of Ganja. The sample packet and the remaining Ganja was packed and sealed under seizure panchanama, a copy of which was given to the Respondent and

his signature was obtained on the same. Respondent was arrested and later taken to Swargate Police Station.

3. PW4 – PSI Ajit Joshi filed a Complaint at Swargate Police Station on the basis of which C.R.No.70/1995 was registered against the Appellant. PW4 – PSI Ajit Joshi submitted the compliance report to the Inspector Patil on the same date. The sample was forwarded to CFSL for chemical analysis report and the CA report confirmed that the sample was that of Ganja, being a narcotic contraband. Upon conclusion of investigation, charge sheet came to be filed against the Respondent-accused for offence under Section 20(1)(b) of ND&PS Act.

4. Charge was framed against the accused to which he pleaded not guilty and claimed to be tried. The prosecution examined in all four witnesses in support of the charge. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The accused denied all the incriminating circumstances. The defence of the Respondent-accused is that on the relevant date, while he was standing on the road, two constables approached him and took him to the Police Station under the pretext that he was called by the Police. The Respondent- accused has raised the plea of false implication.

5. The learned Judge upon considering the evidence on record, held that the prosecution has failed to prove compliance of Section 41 and 42 of ND&PS Act. The learned Judge has further observed that there was discrepancy in the weight of the sample which was allegedly sent to CFSL and the weight of the sample which was actually received by CFSL. The learned Judge observed that the evidence of PW1 – Manohar (Muddemal Clerk) vis-a-vis Muddemal Register (Exhibit – 21) does not show that PW4 – PSI Ajit Joshi had produced the sample packet in the police station on the date of the incident. There was no evidence to show that the Muddemal Clerk had put the seal of the police station on the sample packet. The learned Judge has therefore held that the discrepancy raises a doubt about production of sample packet in the police station and compliance of Section 55 of the ND&PS Act. This shows that a positive attempt was made by the Investigating Agency to avoid to collect the independent evidence in the present case. The learned Judge has also taken note of the fact that the raiding party had not secured presence of any independent witness. The learned Judge therefore held that the prosecution has failed to prove the charge beyond reasonable doubt and accordingly acquitted the accused. Being aggrieved by the acquittal, the State has filed this Appeal.

6. I have perused the records and considered the submissions advanced by Mr. S.V. Gavand, learned APP for the Appellant – State, Mr. Rahul S. Kate, learned counsel for the Respondent – accused.

7. It is to be noted that one of the grounds of acquittal is non compliance of section 41 and 42 of NDPS, Act. Section 41(1) of the NDPS Act provides that the Metropolitan Magistrate or Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under the Act or for the search of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under the Act has been committed. Sub-section (2) of Section 41 refers to issue of authorization for similar purposes by the Officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence, etc. Sub-section (1) of Section 42 provides that the empowered officer if he has prior information given by any person should necessarily take it down in writing and when he has reason to believe from his personal knowledge for offences under Chapter 4 have been committed or that materials which may furnish

evidence of commission of such offences, are concealed in any building, conveyance, etc. he may carry out the arrest or search without warrant between sunrise and sunset and he may do so without recording his reasons of belief. Sub-section (2) of section 42 provides that such empowered officer who takes down any information in writing or records the grounds under proviso to section 42(1), should forthwith send a copy thereof to his immediate official superior thereof. It is not in dispute that these provisions are mandatory and are required to be construed and complied with strictly.

8. In the instant case, it is the case of the prosecution that PW4 – PSI Ajit Joshi had received confidential information that the accused was travelling from Pune to Katraj via. Satara Road by his commander jeep bearing No.MH-12/P-9094, was in possession of Ganja. PW4 has deposed that he had reduced the said information in writing. He has produced the same at Exhibit – 38. He claims that he had made an entry in receipt of the information in Narcotic register maintained in the Vigilance Branch office. He claims that Inspector Patil had made an endorsement indicating that he had directed him to investigate the said crime. He has produced the said entry at Exhibit – 31. He claims that he had given a separate report to Inspector Patil in writing and that

Inspector Patil had made a similar endorsement on the said report giving the directions to investigate. He has produced the said report at Exhibit – 40. It is to be noted that Exhibits – 39 and 40 do not specify the time at which the endorsement was made by Inspector Patil. The prosecution had not examined Inspector Patil and had not given any explanation for his non participation even though it is the case of the prosecution that the said Inspector Patil was available in the office at the relevant time. This discrepancy raises doubt about prior permission / authorization allegedly given by Inspector Patil and/or compliance of section 41 and 42 of the Act.

9. The evidence of PW4 – PSI Ajit Joshi indicates that he had directed head constable Kamble to secure presence of two pancha witnesses. He has stated in his cross-examination that he did not find it necessary to secure presence of some local residents to serve as pancha witnesses. He had secured presence of PW3 as one of the pancha witnesses. The evidence of PW3 reveals that on 27/12/1995 at about 03:00 p.m., while he was passing by the commissioner's office, one police constable who was in plain clothes approached him and requested him to serve him as pancha witnesses. This witness has stated in his cross examination that he was employed as Senior Clerk in

Pune Telephone. He is a resident of Uruli Kanchan and his office is situated at Sawarkar Bhavan, Shivaji Nagar, Pune. He claims that as on the date of the incident, he was on casual leave. It is to be noted that PW4 – PSI Ajit Joshi had not secured presence of any independent witness though available but had requested PW3 – Deepak to serve as pancha witness. PW3 appears to be a chance witness. He had no reason to be at the place of the incident when he was on casual leave for some other purpose.

10. The evidence of PW3 and PW4 indicates that upon taking personal search of the jeep they found one gunny bag. They opened the said gunny bag and found that it contained Ganja. It is stated that the police had taken sample of 01 kg of Ganja and packed it in a plastic bag. PW3 - Deepak has stated that the said plastic bag was wrapped in brown paper and that the gunny bag containing remaining Ganja, was again stitched by using a plastic thread. The evidence of these witnesses does not indicate that the polythene bag in which the sample Ganja was packed, was sealed in presence of the panchas.

11. The evidence of PW1 - Manohar who was attached to Swargate Police Station as a Muddemal Clerk has deposed that on 27/12/1995,

PSI Joshi had produced before him the Muddemal Property and the panchanama relating to C.R.No.70/1995 and that he had made an entry at S.No.34 at Muddemal Register in respect of the said property. He has stated that on 28/12/1995, the sample packet of Ganja which was in closed and sealed condition, was sent to the Commissioner's office through the constable Jagtap. His evidence does not indicate that the sample which was received by him on 27/12/1995 was in sealed condition. The Muddemal Register produced at Exhibit – 21 also does not indicate that the sample packet was produced in the police station on 27/12/1995. This discrepancy creates a reasonable doubt as whether the said packet was produced in the police station on the said date or immediately after the date of the incident.

12. It is the case of the prosecution that the sample packet contained one kg Ganja whereas the CA report at Exhibit - 37 indicates that the sample received in the CA office weighed 935 grams. It is to be noted that Ganja was received in CFSL on 28/12/1995 and was tested on 30/12/1995. It is not the case of the prosecution that the Ganja which was seized was fresh green Ganja. Under such circumstances, there was no possibility of reduction of weight of almost 65 grams of Ganja within two days. As rightly observed by the learned Judge that the

prosecution has not explained the discrepancy in the weight of the sample of Ganja taken by PW4 – PSI Ajit Joshi vis-a-vis weight of Ganja received by CFSL.

13. Considering the above discrepancies, the learned Judge has held that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The order of acquittal is neither perverse nor it has an implausible view. Hence, the order cannot be interfered with. Under the circumstances, the Appeal has no merits and is accordingly dismissed.

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(SMT. ANUJA PRABHUDESSAI, J.)