

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1074 OF 2007**

The State Of Maharashtra

... Appellant

V/s.

Madhukar Vasant Chavan And Anr..

... Respondents

Mr. S. S. Hulke, APP for Appellant-State.

None for Respondents.

CORAM : A.S. GADKARI, J.

DATE : 5th July 2022.

P.C. :

1. This is an Appeal under Section 378 of the Criminal Procedure Code (for short "CrPC") against the Judgment and Order dated 24th February 2006, passed by learned I-Ad-Hoc Additional Sessions Judge, Satara in N.D.P.S. Sessions Case No. 2 of 2005, acquitting Respondents for the offence punishable under Sections 20(b), 22 and 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the N.D.P.S. Act").

2. Heard Mr. Hulke, learned APP for State. Despite of service, none appeared for Respondent No.1. Perused record.

3. At the outset, it is to be noted here that, despite granting repeated opportunities, Appellant has failed to serve Respondent No.2. By a self operative Order dated 7th June 2022, present Appeal against Respondent No.2 stood dismissed for non effecting service within the stipulated period.

4. As per record, it is the prosecution case that, on 6th March 2005, Police Inspector (PI.) attached to Sakharwadi Police Outpost, District Satara namely Mr. Sambhaji Patil (PW.5), had been for inspection in the local market to regulate traffic alongwith Police Sub Inspector (P.S.I.) Mr. Ranjit Sawant (PW.2). There they noticed crowd near Shankar Saw Mill. They found two persons (Respondents herein) at the said place having two polythene bags in front of them. Police inquired with the Respondents about the contents in the said bags whereupon Respondents informed them that, the polythene bags were contained with Ganja i.e. contraband. PI. Mr. Patil (PW.5) thereafter send Police Head Constable Mr. Pawar to Phaltan Police Station, District Satara to bring necessary equipments to weigh and seal the said contraband substance. P.H.C. Mr. Pawar accordingly brought the said necessary instruments and thereafter the contraband was weighed. Each polythene bag was containing six kilograms of Ganja including the weight of polythene bag. The said contraband was seized under panchanama (Exh-19). After completion of investigation and receipt of Chemical Analyzer's Report (Exh-20), police submitted charge-sheet in the Court of Judicial Magistrate First Class, Phaltan on 7th March 2005.

5. As the case was triable by the Special Court established under the N.D.P.S. Act, learned Magistrate after taking cognizance, committed the said case to the Court of Sessions at Satara, by its Order dated 5th May 2005.

Appellant, prosecution examined in all five witnesses in support of its case. The Trial Court, by its impugned Judgment and Order was pleased to acquit the Respondents from all the charges framed against them.

6. Perusal of record clearly indicates that, upon receipt of information, P.I. Sambhaji Patil (PW.5) alongwith P.H.C. Mr. Pawar and P.S.I. Ranjit Sawant (PW.2) went to weekly Bazar where they noticed people gathered at a particular place and they also found two persons (Respondents) with two separate polythene bags in front of them. Mr. Patil (PW.5) in his cross-examination has admitted that, he introduced himself to Respondents as a Gazetted Officer and took personal search of them, whereupon no cash was found on their person. It further clearly appears from the record that, the mandatory provisions of Section 50 of the N.D.P.S. Act have not been complied with by the concerned Officer. The mandate of law, as enunciated by the Constitution Bench of the Hon'ble Supreme Court in the case of *State of Punjab Vs. Baldev Singh*, reported in (1999) 6 SCC 172 followed by another decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *Vijaysingh Jadeja Vs. State of Gujrat*, reported in (2011) 1 SCC 609 has not been followed at all by the concerned Officer while taking search of Respondents and seizure of contraband.

7. Though it is contended by the prosecution that, it was a chance recovery but the evidence on record of the prosecution witnesses speaks

otherwise. Mr. Pawar (PW.1) an independent panch witness in his cross-examination has admitted that, he was accused in a criminal case before the Sessions Court. That, he knew the Police from Sakharwadi Police Outpost, District Satara and was having good relations with them. That, he signed the panchanama at the scene of offence which was already drawn by the Police. That, he did not see Ganja at any time in his life. He has further admitted that, the police did not speak or talk about anything with Respondents in his presence. This clearly establishes the fact that, the police have failed to comply with the mandatory provisions of Section 50 of the N.D.P.S. Act.

7. Perusal of the impugned Judgment and Order reveals that, the Trial Court has appreciated the evidence available on record in its proper perspective and has not committed any error while acquitting Respondents from the offence alleged against them. The view adopted by the Trial Court is reasonable and probable view based on the evidence on record.

This Court therefore finds that, there are no merits in the Appeal and is accordingly dismissed.

[A.S. GADKARI, J.]