

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.140 OF 2020

THE STATE OF MAHARASHTRA
VERSUS
KARUNAKAR KUMARSWAMI IJJIGIRI

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Mr. S.D. Ghayal, APP for applicant

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**CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.**

DATE : 19th OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 29.08.2020 passed by learned Special Judge, under NDPS Act, Beed in NDPS Special Case No.1/2018, thereby acquitting respondent – original accused from the offence punishable under Section 20(B)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2 Heard learned APP Mr. S.D. Ghayal for the prosecution and with

his help we have gone through the record which was available before the learned trial Judge.

3 The prosecution has come with a case that upon the secret information received around 20.00 hours on 20.01.2018 by Mr. Ghanshyam Palwade, Police Inspector, Local Crime Branch, Beed that Ganja is being transported from truck bearing No.AP-16/TY-1206 from Hyderabad towards Beed via Chousala. Telephonic information was allegedly given to the Superintendent of Police, Beed and trap was laid. They had taken drug testing kit along with them. Two panchas were arranged. Around 00.50 hours they reached near a Dhaba, where a truck was parked. They found three persons in the cabin of the truck. When one person was being inquired, the other got down from the truck and fled away. The Cleaner gave his name as Karunakar i.e. present respondent – original accused. He gave the names of one other person as ‘Shriniwas’ and other’s name was told only as ‘Suri’. It is alleged that after complying the provisions of Section 50 of the N.D.P.S. Act search was taken, Ganja was found wrapped in paper. It was weighed. Total 32 packets wrapped in a paper and plastic paper were found. All the packets were opened which were having strong smell. Thereafter white colour plastic gunny bags were taken from the Dhaba and 32 bags were filled. Total weight initially was found to be 713.880 k.gs. and arranging them in 32 gunny bags

it weighed in all 689.66 k.gs. The market price was Rs.41,37,960/-. Panchnama was drawn and then the accused as well as the muddemal was brought to Police Station, whereupon offence came to be lodged on behalf of State against the accused. In all 32 samples marked as S-1 to S-32 were sent for chemical analysis to Forensic Laboratory, Aurangabad on 23.01.2018. Further investigation was carried out and after completion of investigation charge sheet was filed.

4 Prosecution examined in all six witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides learned trial Judge has acquitted the accused from all the charges.

5 Important point to be noted is that all the witnesses broadly tried to corroborate with each other by saying that the information was received and then raid was conducted. Ganja was allegedly found in the truck. When the accused was allegedly sitting in the driver's cabin, it also appears that the Investigating Officer by filing application Exh.9 had sought permission from Special Judge, under NDPS Act, Beed on 21.02.2018 seeking permission to dispose of the contraband under Section 52-A of the N.D.P.S. Act. The Investigating Officer was permitted to dispose of the muddemal according to law, as per the provisions laid down under Section 52-A of the N.D.P.S. Act.

6 When the deposition of the informant as well as Investigating Officer was recorded it appears that the sample packets (32 in number) were not produced before the Court. After the chemical analysis those packets should be returned by the Analyzer minus the quantity which was taken for testing for which the account has to be given. The samples could not have destroyed or disposed of as the order permitting disposal specifically stated that it should be as per the procedure laid down under the law. There was no inventory held under Section 52-A of the N.D.P.S. Act. Learned trial Judge has rightly relied on the decision in **Hanumantu Gangaram Badawat vs. The State of Maharashtra** reported in **2007 BCI 417** : 2007 ALL M.R.(Cri) 3359 : 2007(2) Mh.L.J. (Cri) 991, wherein reliance was placed on the decision in **Jitendra and another vs. State of Madhya Pradesh** [2004 SCC (Cri.) 2028]. Further reliance has been rightly placed on the decision in **Union of India vs. Mohanlal and another** [(2016) 3 SCC 379], wherein the law under Section 52-A of the N.D.P.S. Act was summarized. It was directed by way of summing up the legal issue that -

“No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(ii) of the Act, which shall be allowed by the

Magistrate as soon as may be required under Sub-Section 3 of Section 52A, as discussed by us in the body of this judgment. It was also directed that the sampling shall be done under the supervision of the magistrate.”

This procedure has not been adopted in the present case. Further, it is observed that there was no compliance of Section 50 of the N.D.P.S. Act. Here, it is to be noted that the accused was sitting in the cabin when he was asked to come down by the raiding party. The vehicle was parked near Dhaba at that time. Then it is said that search of the truck was taken and in between the chassis one box was prepared with the help of tins having nut bolts. The said box was opened and noted that some packets were inside and those packets are stated to be the Ganja packets. That means, the accused was not possessing on his person those packets at the relevant time. The accused is said to be the cleaner. The person who fled away i.e. Shriniwas is alleged to be the driver and, therefore, under the said circumstance, in order to prove the conscious possession the facts are lacking. Therefore, the acquittal of the respondent – original accused on the technical grounds for non compliance of mandatory provisions was justified. No interference is required. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)