



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

**CRIMINAL APPEAL NO.14/2022**

Shri Omin Muka Kobasi,  
Convict No.C/10731, Aged 40 years,  
Occ. Nil. r/o Gram Tondapul,  
Tahsil & District Malkangiri,  
Orissa State (appellant is presently  
in Central Jail)

**....APPELLANT**

**...V E R S U S...**

The State of Maharashtra, through  
Police Station Officer, Police Station,  
Rajura, Taluka Rajura, District  
Chandrapur.

**...RESPONDENT**

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Ms Sweta D. Wankhede, Advocate for appellant.  
Mr. A. Ghogre, A.P.P. for respondent.  
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**CORAM:- ANIL L. PANSARE, J.**  
**DATED :- 10.11.2023.**

**JUDGMENT**

The appellant – original accused has taken exception to the judgment and order dated 05.04.2021 passed by learned Additional Sessions Judge, Chandrapur in Special N.D.P.S. Case No.05/2018, whereby the appellant has been convicted for the offences punishable under Sections 20(b)(ii)(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the, “NDPS Act”) and has been sentenced to suffer

10 years imprisonment and to pay a fine of Rs.1,00,000/-, in default to suffer further imprisonment for one year.

2. Briefly stated, the facts are that on 17.07.2018, PW6 was on duty of Nakabandi at Lakkadkot SST. At that time, one white car, despite giving signal to stop, fled away. PW6 and his team chased the car and intercepted it near Anandguda. The car was searched and Ganja discovered. PW2 pancha and PW3 Naib Tahsildar deposed that they were called by the police for undertaking this search of the vehicle in their presence, which was done. They found that the Ganja was wrapped in plastic bags. The Ganja was weighed and found to be 144.242 Kg. Photographs of spot and Ganja were taken. Two samples of 100 Gm. each were drawn. The Ganja and other articles were seized under panchanama Exh.-22 and 24. PW8, on 19.07.2018, took samples to RFSL. PW9, investigating officer, states that on 19.07.2018, he along with seized contraband approached learned Magistrate, Rajura. The contraband was measured in the presence of the learned Magistrate. It was in consonance with seizure panchanama. Accordingly, the Court of the learned Magistrate issued a certificate Exh.-42. The investigation was then completed and charge-sheet came to be filed. Since the appellant did not

plead guilty to the charges, the prosecution has examined 9 witnesses to bring home guilt of the appellant. The trial Court having found the appellant guilty of the offences, has passed the impugned order.

3. Learned counsel for the appellant has challenged the order on the ground of non compliance of Section 52A of the NDPS Act, which reads thus:

*“52A. Disposal of seized narcotic drugs and psychotropic substances.-*

*(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.*

*(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their*

*description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-*

*(a) certifying the correctness of the inventory so prepared; or*

*(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or*

*(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.*

*(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.*

*(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence”*

4. Learned counsel for the appellant submits that the samples were drawn at the spot and not before the Magistrate. He further submits that the samples were sent to the Chemical

Analysed on 19.07.2018. The inventory of the contrabands was drawn before the Magistrate on 19.07.2018. The samples were, however not drawn before the learned Magistrate. The samples drawn at the spot were sent to RFSL. This procedure of sending samples drawn at the spot and of not drawing and sending the samples drawn before the Magistrate is contrary to the law laid down by the Hon'ble Supreme Court in the case of **Union of India Vs. Mohanlal**, reported in **(2016) 3 SCC 379**, wherein the Supreme Court has held in paragraphs 15 to 17 thus:

*“15. It is manifest from **Section 52A(2)(c)** (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.*

*16. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be*

*enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.*

17. *The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A (4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure.”*

5. Thus, the Court has, in unequivocal terms, held that the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct. The Court has further held that the question of drawing samples at the time of seizure which, more often than not, takes place in the absence of Magistrate, does not in the above scheme of things arise. Despite such status, in the present case, samples drawn at the spot have been sent to the RFSL.

6. The counsel for the appellant has then relied upon judgment in the case of *Simarnjit Singh .Vs. State of Punjab*, reported in *2023 (3) Crimes 168*. The facts in this case were akin

to the facts of the present case. The driver and other two persons sitting in the tempo were apprehended. The search of the tempo was conducted. It led to recovery of eight bags of poppy husk concealed under tarpaulin. The investigating agency has, from each part, drawn two samples of 250 Gms. The conviction was challenged for non compliance of *Mohanlal's* case (supra). The Supreme Court, by relying upon *Mohanlal's* case, has held that the act of investigating officer drawing samples from all the bags at the time of seizure is not in conformity with the law laid down by this Court in the case of *Mohanlal*, which creates serious doubt about the prosecution case that the substance recovered was a contraband.

7. The learned counsel for the appellant, by placing reliance upon the aforesaid judgments, submits that the present case is covered by these two judgments and, accordingly, prayed for setting aside the impugned judgment.

8. Learned A.P.P. has countered the submissions. However, when the evidence of witness was scrutinized, what transpires is that on 17.07.2018, the indigo car was intercepted. A bag containing Ganja was found. The investigating agency has drawn samples from the bag. The seized contraband was produced

before the learned Magistrate and weighted in his presence. The samples, however, were not drawn. The samples drawn at the spot were sent to the RFSL on 19.07.2018.

9. This procedure is in blatant violation of the law laid down in *Mohanlal's* case. The Supreme Court in *Simarnjit Singh's* case, in which the facts were identical to the present case, has held that the seizure of contrabands was not in conformity with the law laid down in *Mohanlal's* case and thus set aside the conviction. Similar will be the fate in the present case. The evidence of the prosecution witnesses would clearly spell out that the seizure in the present case, is not in conformity with the law laid down in *Mohanlal's* case. This lapse will be fatal to the case of the prosecution and will thus create serious doubt about its case that the substance recovered was a contraband, Ganja.

10. The trial Court, seems to have been not properly appraised of the law laid down in *Mohanlal's* case, that resulted in passing an erroneous order. On this count alone, the impugned judgment is liable to be quashed and set aside. Hence, following order is passed.

**ORDER**

- (i) The appeal is allowed.
- (ii) The impugned judgment and order dated 05.04.2021 passed by Additional Sessions Judge, Chandrapur in Special N.D.P.S. Case No.05/2018, is quashed and set aside.
- (iii) Bail bonds of the appellant stands cancelled.
- (iv) The appellant be set at liberty forthwith, if not required in any other crime.

**(Anil L. Pansare, J.)**

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