



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

CRIMINAL APPEAL NO. 240 OF 2005

The State of Maharashtra,
Through Police Station Udgir

.. Appellant
(Ori. Complainant)

VERSUS

Govind Bhimrao Pawar,
Age : 45 Years, Occ.
R/o. Toranawadi, Tq. Aurad (S)
Dist. Bidar (Karnataka)

.. Respondent
(Ori. Accused)

....

Shri. R. D. Raut, Additional Public Prosecutor for the
Appellant/State

Shri. G.D. Kale, Advocate for Respondent sole.

...

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 5th FEBRUARY, 2025

PRONOUNCED ON : 11th FEBRUARY, 2025

JUDGMENT :-

1. The appellant/State is challenging the judgment and order dated 30.12.2004 passed by the learned Special Judge, Latur (hereinafter referred to as ' the learned trial Court') in Special Case No. 8 of 2002 whereby the present respondent i.e. one of the original accused persons, has been acquitted from the offence of having illegal possession of 'Ganja' in contravention of Section 8(c) punishable under Section 20(1) (b) of the Narcotic Drugs and Psychotropic Substances Act, (for

short' N.D.P.S. Act').

2. According to the prosecution, Police Inspector Mr. Patel attached to the Udgir (City) Police Station received secret information that two persons were bringing '*Ganja*' from Karnataka State. Accordingly, he along with *panchas* and Medical Officer i.e. Gazetted Officer with necessary articles for measurement, went to the Bus Stand. At that place two persons as per the description received in secret information, were spotted. During the search, '*Ganja*' was found in two separate gunny bags which were with them. Samples were taken from both the bags and *panchnama* was prepared and both the accused were brought to the police station along with *Muddemal* and samples and thereafter offence was registered. After completion of the investigation, charge sheet was filed against the present respondent/accused. As one of them was juvenile, his case was separated as per law. The learned trial Court after conducting the trial, acquitted the respondent/accused.

3. The learned A.P.P. strongly submitted that '*Ganja*' was recovered from the gunny bags with the accused. Further, there was also entry in the station diary by Police Inspector

Patel, about sending the information to the superior officers. He pointed out that accused were found with 'Ganja' which was immediately seized and the Chemical Analysis report in respect of the same has also supported the prosecution case. Thus, the learned A.P.P. claims that the trial Court has definitely erred in acquitting the present respondent/accused.

4. On the contrary, the learned counsel for the respondent/accused strongly supported the impugned judgment and submitted that there is absolutely no evidence of independent witness supporting to the case of prosecution and other police witnesses. He pointed out that the only independent witness which was examined i.e. (P.W. No.2) *Panch Dhondiram* has not supported the case of prosecution. Therefore, it would be rather unsafe to convict the respondent/accused on the basis of sole testimony of P.I. Patel. He also relied in the case of ***Gurbax Singh Versus State of Haryana reported in [AIR 2001 Supreme Court 1002]*** wherein it is observed as follows :-

“ The learned counsel for the appellant next contended that from the evidence it is apparent that the Investigating Officer has not followed the procedure prescribed under Section 52, 55 and 57 of the N.D.P.S. Act. May be that the I.O. had no knowledge about the

operation of the N.D.P.S. Act on the date of the incident as he recorded the FIR under Section 9 of the Opium Act. In our view, there is much substance in this submission. It is true that provisions of Section 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article. In the present case, I.O. has admitted that the seal which was affixed on the muddemal article was handed over to the witness PW-1 and was kept with him for 10 days. He has also admitted that the muddemal parcels were not sealed by the Officer-in-charge of the police station as required under Section 55 of the N.D.P.S Act. The prosecution has not led any evidence whether the Chemical Analyser received the sample with proper intact seals. It creates a doubt whether the same samples was sent sent to the Chemical Analyser. Further, it is apparent that the I.O. has not followed the procedure prescribed under Section 57 of the N.D.P.S Act of making full report of all particulars of arrest and seizure to his immediate superior officer. The conduct of panch witness is unusual as he offered himself to be a witness for search and seizure despite being not asked by the I.O. particularly when he did not know that the substance was poppy husk, but came to know about it only after being informed by the police. Further, it is the say of the panch witness that Muddamal seal used by the PSI was wooden seal. As against this, it is the say of

PW-2 SI/IO that it was a brass seal. On the basis of the aforesaid evidence and faulty investigation by the prosecution, in our view, it would not be safe to convict the appellant for a serious offence of possessing poppy-husk.”

5. In reply the learned A.P.P. also relied on the judgment of Hon'ble Apex Court reported in **Rajendra Versus State of Madhya Pradesh reported in [2003 DGLS (Supreme Court) 1079]** wherein it is mentioned that Section 42 and Section 50 of the N. D. P. S. Act have no application in the present case.

6. Heard rival submissions, also perused the record and proceedings along with the impugned judgment in the light of judgments cited by rival parties.

7. On going through the evidence and impugned judgment, it is clearly evident that the prosecution has examined only four witnesses. Out of these witnesses, PW No.1 is the carrier of *Muddemal*, P.W. No.2 *Dhondiram* is the spot *panch*; whereas P.W. No.3 is the informant P.I. Patel, who also conducted the investigation in part and P. W. No.4 P.S.I. Sharma, who collected the C.A. report and filed charge sheet.

8. It is extremely important to note that P.W. No.2 *Dhondiram* appears to be the only independent witness, who had gone with the police as per the secret information received and in whose presence P.I. Patel accosted accused persons and also seized '*Ganja*' from their possession. Though this witness in his examination-in-chief stated as per the prosecution case, but in the cross-examination this witness has completely shattered the case of prosecution by giving certain vital admissions. He specifically stated that he was called by the Police Officer Shri. Kulkarni and he singed the *Panchnama* at the instance of said Police Officer. He further stated that he did not know about contents of the *panchnama*. It is further evident from his cross-examination that the samples along with *muddemal* shown to him in the police station itself and *panchnama* was prepared in the police station. Thus, the entire evidence of P.W. No.3 P. I. Patel has been washed out due to such admissions given by P.W. No.2 *Dhondiram*. Further, though P.W. No.3 Patel has deposed as per the prosecution story, but his sole testimony uncorroborated by other independent witness, cannot be taken for recording conviction against the respondent/accused, in view of the aforementioned observations of Hon'ble Apex Court in the case of **Gurbakshsingh Vs. State of Hariyaana**. Thus, there is no

corroborative evidence on record to the version of Police Inspector Patel, who has stated as to how the secrete information was received and how the respondents were found on the spot with '*Ganja*'. Further, it is extremely important to note that other independent witness i.e. Gazetted Officer Dr. Lakhotiya, has also not been examined for the reason best known to the prosecution.

9. The learned trial Court has mainly observed that though the compliance of Section 57 of the N.D.P.S. Act was not mandatory, but such non-compliance in the present trial can be treated as a circumstance for not believing sole testimony of P.W. No.3 P.I Patel. Moreover, P.I. Patel also admitted that he did not prepare arrest *panchnama*, though he had arrested the accused on the spot. The trial Court also observed this deficiency as a circumstance for creating hurdle to believe version of P.I. Patel. As such, though the statutory compliance was not needed, but the evidence on record in the present case is not convincing and it would be rather unsafe to believe the testimony of (P.W.No.3) P.I. Patel to convict the respondent/accused specially when there is no supporting evidence of independent witness on record. Thus, considering all these aspects, there is no need to interfere with the

impugned judgment. The prosecution has not proved the guilt of accused beyond all reasonable doubts. As such, the appeal fails and accordingly dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni