CGHC010161882005 2026:CGHC:43236

**AFR**

**Reserved on 20.07.2026**

**Pronounced on 06.10.2026**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 123 of 2005**

**1 -** Chhattar Singh S/o Sukhram Singh Gond R/o Village – Baghindand ,P.S. Pasan, Distt. Korba (C.G.)

**... Appellant**

**versus**

1 - State Of Chhattisgarh, Through Police Station Pasan, District – Korba (C.G.)

**---- Respondent**

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| For Appellant | : | Ms. Chetna Sharma, Advocate |
| For State | : | Ms. Prachi Singh, Panel Lawyer |

**Hon'ble Shri Justice Narendra Kumar Vyas**

**C.A.V. JUDGMENT**

1) The appellant by way of this appeal has challenged the judgment of conviction and order of sentence dated 28.01.2005 passed by the Additional Sessions and Special Judge, Korba (C.G.) in Special Sessions No. 12/2004 whereby and whereunder, he has been convicted and sentenced as under :-

| Conviction U/s. | Sentence RI. | Fine | In default of payment of fine |
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|---|---|---|---|
| 20(A)(I) of NDPS Act | 4 Years | Rs. 25000/- | 6 months R.I. |

2) In brief, the prosecution story is that on 21.08.2004, the Station House Officer of Police Station Pasan received a secret information from an informant that the accused had illegally cultivated cannabis (ganja) plants in the backyard of his house where maize had also been cultivated. The information was recorded in the Rojnamcha (Daily Diary) vide Entry No. 52. Thereafter, accompanied by the police staff and independent witnesses, the Investigating Officer proceeded to the spot for investigation. Upon reaching the place of occurrence at Village Badhindanda, a cordon was laid and the accused was apprehended. He was informed about the secret information received against him. Thereafter, a search was conducted. During the search, 425 cannabis (ganja) plants were found growing in the backyard of his house. The seizure memo, spot map, identification memo, weighment memo, sealing memo, sample seal memo and other necessary documents were prepared at the spot. The cannabis plants were seized, and a Dehati Nalishi (preliminary report) was also recorded at the place of occurrence.

3) During the course of investigation, the Investigating Officer prepared the search memo (Ex. P-1 to 3), identification memo of the seized articles (Ex. P-4), Samras memo (Ex. P-5), weighment panchnama (Ex. P-6), Sampling Memo (Ex.P-7) sample seal memo (Ex. P-8), Offence detail form (Ex. P-09), seizure memo (Ex. P-10), and obtained the Patwari's spot map (Ex. P-12). A receipt acknowledging the deposit of the seized cannabis in the police station malkhana for safe custody (Ex. P-13) was also obtained. Thereafter, the accused was arrested vide arrest memo

(Ex.P/11). Accordingly, the First Information Report (Ex. P-16) was registered. A sample of the seized cannabis was forwarded for chemical examination and received report (Ex. P-14). Upon completion of all the formalities of investigation a charge-sheet for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, was filed before the competent Court.

4) The prosecution to bring home the guilt of the accused has examined the witnesses namely Suped Das (PW/1) Baldev (PW/2) A.S. Portey, Constable (PW/3) Jalandhar Shrivas, Patwari (PW/4) Shashi Bhushan, Head Constable (PW/5) Alexender Kiro, Investigating Officer (PW/6) and exhibited16 documents. The accused was examined under Section 313 of the Code of Criminal Procedure wherein he stated that he is innocent and has been falsely implicated. He further contended that, since the prosecution witnesses were Government officials, they had deposed falsely against him and had falsely implicated him, he has not cultivated the cannabis and also the backyard does not belong to him. He did not examine any witness and exhibited one document, letter from Thana Incharge to the patwari as Ex.D/1.

5) Upon appreciation of the evidence available on record, the learned Special Judge found that the prosecution had succeeded in proving that the accused was in conscious and exclusive possession of 425 cannabis (ganja) plants cultivated in the backyard of his house. The learned trial Court also took note of the report of the Forensic Science Laboratory, which confirmed that the seized samples were cannabis (ganja). Consequently, the learned trial Court held that the prosecution had successfully established the charge under Section 20 of the

Narcotic Drugs and Psychotropic Substances Act, 1985, and, by the impugned judgment, convicted the accused as aforesaid. Being aggrieved with the judgment of conviction the appellant has preferred this appeal.

6) The appellant was arrested on 21.08.2004 and during trial he remained in jail till the judgment of conviction was passed on 28.01.2005 and thereafter this Court has granted bail to the appellant on 23.02.2005 but since he has not deposited the fine amount, therefore, application was filed by the appellant for suspension of fine amount which was considered by this Court on 11.08.2005 and suspension of fine amount was also granted by this Court and thereafter, he was released on bail.

7) Learned counsel for the appellant would submit that the impugned judgment of conviction and order of sentence passed by the learned trial Court are contrary to law as well as the evidence available on record. It is contended that the prosecution has failed to prove beyond reasonable doubt that the appellant has cultivated the cannabis plant and the appellant is in exclusive possession of the land where the prosecution has alleged cultivation of cannabis. The prosecution case suffers from material contradictions and omissions, and compliance of the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, governing search, seizure, sampling and safe custody of the seized contraband. Therefore, on the ground of procedure mandated by Section 50 of the NDPS Act, the appellant is entitled to be acquitted. She would further submit that learned trial Court has further committed illegality in ignoring the defence taken by the accused while recording his statement under Section 313 of the Cr.P.C. wherein he has

categorically stated that the land does not belong to him and he has not cultivated the said cannabis.

8) Learned counsel would further submit that Suped Das (PW/1) and Baldev (PW/2) could not prove the prosecution version and further, the plants were not wrapped or sealed before them. Thus, the learned trial Court has failed to properly appreciate the oral and documentary evidence and has recorded the conviction on the basis of conjectures and surmises. Accordingly, she would pray for allowing the appeal and set aside the impugned judgment of conviction and order of sentence.

9) Per contra, learned counsel for the State would support the impugned judgment of conviction and order of sentence and submit that the same is legal, proper and based upon a correct appreciation of the evidence available on record. She would further submit that the evidence of the prosecution witnesses, particularly that of the Investigating Officer and other official witnesses, is cogent, consistent and trustworthy and inspires full confidence. Merely because the witnesses are government officials, their testimony cannot be discarded in absence of any material to establish animosity or motive for false implication. Their evidence stands duly corroborated by the documentary evidence prepared during the course of investigation. She would further submit that the search and seizure proceedings were conducted strictly in accordance with law. The secret information was duly recorded in the Rojnamcha before proceeding to the spot, the search was carried out in presence of witnesses, the cannabis plants were seized in accordance with the prescribed procedure, and the requisite seizure, sampling, sealing and other memorandum were duly prepared. The seized articles were

deposited in the police station *malkhana*, and the samples were forwarded to the Forensic Science Laboratory through the prescribed channel. The report of the Forensic Science Laboratory conclusively establishes that the seized samples were cannabis (ganja), thereby fully supporting the prosecution case. As such, the findings recorded by the learned trial Court do not suffer from any illegality, perversity or infirmity warranting interference by this Court, and accordingly, she would pray for dismissal of the appeal.

10) I have heard learned counsel for the parties and perused the record of the trial Court with utmost satisfaction.

11) From the submissions made by the parties, point emerged for determination is 'Whether the prosecution is able to prove the violation of Section 8 of the NDPS Act to attract the punishment for contravention in relation to cannabis plant as per Section 20 of the NDPS Act beyond reasonable doubt?'.

12) To appreciate this point this Court has to appreciate the provisions of law as well as the evidence brought on record by the prosecution. Sections 8 and 20 are reproduced as under :-

> **8. Prohibition of certain operations.**— No person shall—
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> (a)cultivate any coca plant or gather any portion of coca plant;or
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> (b)cultivate the opium poppy or any cannabis plant; or
>
> (c)produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of

such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

**20. Punishment for contravention in relation to cannabis plant and cannabis.—** Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,--

(a)cultivates any cannabis plant; or

(b)produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable--

(i)where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees;

(ii)where such contravention relates to sub-clause (b),—

( A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;

( B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

13) From perusal of the evidence of Suped Das, the Kotwar (PW/1) it is quite vivid that this witness has stated that the cannabis plants were growing in the backyard of the accused's house, where maize had also been cultivated but he has nowhere stated that the appellant was cultivating the cannabis. The independent witness Baldev (PW-2) has admitted in his cross-examination that he does not know the backyard belongs to

whom and when they reached to the house of the accused, 2-3 gents, ladies and children were present. S.S.Porte, Constable in his evidence has admitted that which agricultural field and which backyard belong to whom is not known to him and also admitted that appellant's father is surviving and no partition between father and brothers has taken place.]

14) Jalandhar Sidar, Patwari (PW/04) in his cross examination has admitted that in the land bearing khasra No. 74/1 as mentioned in the map Ex.P/12 name of Sukhram has been mentioned as owner of the land which has been mentioned as per the records available with him and also admitted that the person who is owner of the land can only cultivate that land and when he has gone to preparation of map the land was already cultivated and no plants were found on the spot. Alexender Kiro, Investigating Officer (P.W/6) in his cross-examination in paragraph 13 has admitted that the backyard where the cultivation of cannabis found is adjacent to the backyard of Holsai and on the other side there is pathway to go to the village. He has also stated that no one can easily come to the place of incident. He has further admitted in paragraph 14 that he has enquired from Holsai that who is cultivating the land then he has informed that the appellant is doing cultivation however, he has admitted that he has not recorded in the diary anything regarding this fact.

15) From appreciation of the evidence it is quite vivid that the prosecution is unable to prove the essential ingredients as provided under Section 8 of the NDPS Act to attract the offence under Section 20 of the NDPS Act regarding cultivation of cannabis plant which is sin-qua-non for proving the commission of offence as the heart of Section 20 (a)(i) is cultivation.

The cultivation has not been defined in the Act therefore, it is necessary for this Court to ascertain the ordinary and literary meaning of the word.

In The Law Lexicon (Fourth Edition, 2017), at page 407, 'cultivate' means "to improve the product of the earth by manual industry; to till or husband the ground to forward the product of the earth by general industry".

16) The above literal meaning clearly indicates that the expression 'cultivate any cannabis plant' used in Sections 8 (b) and 20 (a) of the Act encompasses any act of planting, tilling, raising, growing, farming or gardening a cannabis plant. The essence of the offence lies in the conscious act of planting and nurturing a cannabis plant in contravention of the provisions of the Act.

17) From the evidence brought on record by the prosecution, no positive evidence is brought on record that it was the present appellant who was cultivating the cannabis and in fact no attempt has also been made by the prosecution to prove active involvement of the appellant in growing the plant or nuturing the plant until it was developed. The Investigating Officer (PW/6) has clearly admitted in his evidence that no material is brought on record by him regarding cultivation of cannabis by the appellant in the case diary also. Further, Holsai who may be a strong witness regarding involvement of the appellant in cultivation of cannabis has not been examined by the prosecution which also goes against the prosecution case.

18) Further from the map Ex.P/12 and evidence of the patwari PW/4 it is quite vivid that the land bearing khasra No. 74/1 where there is allegation regarding cultivation of cannabis, name of Sukhram has been

mentioned as owner of the land, as such, it is incumbent upon the prosecution to prove beyond reasonable doubt that the appellant was cultivating and nurturing the cannabis which they miserably failed to do so. Thus, it is quite vivid that the prosecution is unable to prove beyond reasonable doubt that the appellant was cultivating the cannabis which is sin qua non for conviction for the offence for which he has been charged. The Hon'ble Supreme Court in case of **Alakh Ram Vs. State of U.P. {(2004) 1 SCC 766}** has held in paragraph 4 as under :-

> 4. We heard the appellant's counsel and the counsel for the respondent. Under Section 8(b) of the NDPS Act, cultivation of opium poppy or any cannabis plant is prohibited and under Section 20 of the NDPS Act, such cultivation of cannabis plant is made punishable with imprisonment and fine. In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant. There must be supporting evidence to prove that the accused cultivated the plant and it is not enough that few plants were found in the property of the accused. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happen to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation.
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> 6. The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the Ganja plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence either oral or documentary to show that the appellant has a right over the property from which the Ganja plants were recovered. There is no evidence that the appellant cultivated these Ganja plants. Having regard to the extent of the property and the number of plants recovered from that the property, it cannot be said that these plants had been the result of cultivation. They may have been sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of Ganja plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.

19) Thus, from the appreciation of evidence and considering the law, it is

quite vivid that prosecution has not been able to prove that the appellant was cultivating the cannabis, as such order of conviction passed by the learned trial Court suffers from perversity or illegality warranting interference by this Court as even for raising the presumption under the provision of Section 54 of Narcotic Drugs and Psychotropic Substances, Act, the prosecution will have to prove the foundational facts which are necessary for upholding the conviction.

20) In view of the foregoing discussion, this Court is of the considered opinion that the learned trial Court has not properly appreciated the material contradictions and admissions emerging from the prosecution evidence. The finding that the appellant was in conscious and exclusive possession of, and had cultivated, 425 cannabis plants were not borne out by the evidence with the degree of certainty required in a criminal trial that it was cultivated by the appellant himself. In absence of proof regarding cultivation of the cannabis exclusively by the appellant, the appellant is entitled to get the benefit of doubt.

21) Accordingly, the instant appeal is allowed and the judgment of conviction and order of sentence dated 28.01.2005 passed by the Additional Sessions and Special Judge, Korba (C.G.) is set aside. The appellant is acquitted of the charges punishable under Section 20(a)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

22) The appellant is reported to be on bail. His bail bonds shall continue for further six months in view of the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

**Sd/-**
**(Narendra Kumar Vyas)**
**Judge**

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