

IN THE COURT OF THE II ADDL. JUNIOR CIVIL JUDGE-CUM-VI ADDL.
METROPOLITAN MAGISTRATE, MEDCHAL-MALKAJGIRI DISTRICT,
UPPAL, AT L.B. NAGAR

PRESENT: SRI. G. SAI SHARATH
II ADDL. JUNIOR CIVIL JUDGE-CUM-
VI ADDL. METROPOLITAN MAGISTRATE
UPPAL AT L.B. NAGAR.

Dated on this day of 17th day of January 2024

Calendar Case No. 4171 of 2022
(Old Calendar Case No. 2124 of 2018)

Between:

The State of Telangana
through the Proh. & Excise Sub-Inspector,
SHO, Proh. & Excise Station, Uppal.

...Complainant

AND

1. Konkata Uday Raj, S/o. Swamy Das,
Aged about 26 years, R/o. H. No. 4-63/13J,
Arvind Nagar, Ramanthapur
2. Kishore Singh @ Satta Kishore,
S/o. Papalal Singh, aged 43 years,
R/o. H. No. 13-1-932, Near Krishna Hotel,
Mangalhat, Dhoolpet, Hyderabad.

...Accused No. 1 & 2

This case came before me for final hearing and disposal in the presence of the learned Asst. Public Prosecutor for the State, of Sri. T. Pulla Reddy, learned counsel for accused No. 1 and of Sri. P. Ram Mohan, learned counsel for accused No. 2 and upon perusing the material papers on record, stood over for consideration, till this day, this court delivered the following:

JUDGMENT

1. The Prohibition and Excise Sub-Inspector, Prohibition and Excise Station, Uppal filed the charge sheet in COR. No. 254 of 2018 against the accused No. 1 and 2 for the offence punishable U/Sec. 20 (a) (i) and 20(b)(ii)(A) of NDPS Act.

2. Succinctly the case of the prosecution is that on 23.8.2017 on reliable information about illegal possession and sales of dry Ganja at an open place, under the neem tree, Saikrishna Nagar Colony, Ramanthapur, Uppal, the LW4,5 who are empowered u/s.41(2), 42(1) and 53(2) of NDPS Act, 1985 to search, seize the Narcotic Drug and arrest the persons who involve in contravention of provisions of NDPS Act, 1985 in terms of GO Ms.No.148 to 150, Revenue (Excise-II) Department, dt.1.6.2016 notified by the Government of Telangana after intimating to the higher officers u/s.42(2) of NDS Act, 1985 went to the above place and secured two panch witnesses LW1,2. At about 8.30 AM some persons were smoking something and on seeing the officers, they tried to escape, but the officers caught hold of A1. On enquiry, A1 revealed his particulars and the officers informed A1 that u/s.50(1) of NDPS Act, 1985, he has had the right to opt to search him in front of the Gazetted Officer or a Magistrate and further informed that LW4 of the raiding party is a Gazetted Officer, whether he can be searched in front of LW4 and for which the accused consented to search him in front of LW4. The officers recorded notice and served to him under Section 50 of the NDPS Act, 1985. On personal search of the right and left pockets of the pants found 5 packets each. On further enquiry, A1 saw one black cover in between stones under the neem tree and opened the cover and found 21 packets, each packet containing about 50 grams of dry Ganja. AL found Rs.3100/- with him in the denomination of Rs. 100x23=2300/-

, Rs. 50x16=Rs.800/-. Total contraband is 310 grams. On further enquiry, A1 confessed that there were Ganja plants at the surrounding place and showed 4 Ganja plants which are with green leaves and a pungent smell of Ganja coming from them. On further enquiry, A1 confessed that he used to smoke Ganja at the place and throw seeds and Ganja plants are grown. On further enquiry, A1 confessed that he purchased Ganja at Dhoolpet @ Rs. 100/- each packet and he is selling @ Rs.200/-each packet. The officers got the weight of the contraband at a nearby Kirana shop and it was 310 grams. On-demand, A1 failed to produce any valid license or permit. On further enquiry, A1 stated that he would show A2 who supplied Ganja to him. Upon which the LW4,5 drew two samples from Ganja plants and Ganja, each two plants and each about 50 grams respectively, seized the samples, Cash Rs.3100/- and remaining contraband under the cover of panchanama in the presence of LW1 and 2. - Basing on the confession of A1, LW4,5 went to H.No.13-1-932, Near Kasiram hotel; Mangalhat, Dhoolpet, Hyderabad along with A1, LW1 and 2. At about 10.40 AM found the doors of the house were open and A2 ran away from the house. The officers called the inmates of the house, but nobody came out. In search of the house found one black cover in the room beside the hall. On suspicion opened the cover and the pungent smell of Ganja was coming from it. On getting the weight of the contraband from a nearby Kirana shop, it was 240 grams. On local enquiry, it is revealed that the ran away A2 is Kishore Singh @ Satta Kishore, S/o. Papalal

Singh, r/o. H. No. 13-1-932, Near Kasiram Hotel, Mangalhat, Dhoolpet, Hyderabad.

Upon which the LW4,5 drew two samples, each about 50 grams, seized the samples remaining contraband under the cover of panchanama in the presence of LW1 and 2. A1, samples, seized property and Cash Rs.3100/- were brought to the Station and LW5 registered a case in Cr. No. 125/2017, u/s.8(c) r/w.20(a)(b)(ii) of NDPS Act, 1985 produced A1 before the Spl. JMFC Court for Excise cases-cum-XII MM Court, Ranga Reddy District for judicial remand. The officers intimated the seizure and arrest of A1 to the higher officers within 48 hours u/s.57 of the NDPS Act, 1985. The samples, seized property and Cash Rs.3100/- were deposited before the Hon'ble Court vide CPR No.850/2017, dt.29.8.2017 with a letter of advice to send three samples for analysis of LW3. The Hon'ble Court has sent three samples for analysis of LW3. LW-3 after analysing the samples issued CE Report No.5823/2017, dt.31.8.2017 opined that the samples in SI. No. 109418 is Ganja Plant and SI. No. 10942 and 10943 are Ganja. During the course of the investigation, LW6 got a PT Warrant against the accused No. 2 on 26-02-2018 and regulated his arrest. Thus, the accused No. 1 and 2 contravened the provision of Sec.8 (c) of the NDPS Act, 1985 and accused No. 1 is liable for punishment U/Sec. 20 (a) (i) and 20(b) (ii) (A) of NDPS Act, 1985 and accused No. 2 is liable for punishment U/Sec. 20(b) (ii) (A) of NDPS Act, 1985. Hence, the charge.

4. The charge sheet was filed before Hon'ble Spl. JFCM, Excise, Ranga Reddy District, who took cognizance of the case against the accused for the offence U/Sec 20 (a) (i) and 20 (b) (ii) (A) of NDPS Act, 1985 and numbered as CC. No. 2124 of 2018. On the appearance of the accused copies U/Sec 207 Cr. P.C. are furnished against them. The accused were examined U/Sec 239 Cr. P. C for the substance of charges for the offences punishable U/Sec 20 (a) (i) and 20 (b)(ii)(A) of NDPS Act, 1985. This case is transferred to this court at the stage of part heard trial in pursuance of orders of Honourable Principal District and Sessions Judge, LB Nagar and renumbered as CC. No. 4171 of 2022.

5. To prove their case, the prosecution has examined PW-3 out of 6 cited witnesses and exhibited Ex. P1 to P5 and Mo1. The Excise PS Uppal has filed a report through the APP that the whereabouts of LW2 are not known as such, LW2 evidence is closed on 21-03-2022. The prosecution has given up the evidence of LWs 3 and 6 on 28-03-2022.

6. After the closure of the prosecution evidence, the accused were examined U/Sec.313 Cr.P.C. enabling them to explain personally the incriminating circumstances that appeared against them in the evidence, for which they denied the truthfulness of the evidence and reported no defence evidence on their behalf.

7. Heard both sides.

8. *Now the point for determination is whether the prosecution has proved the guilt of the accused No. 1 and 2 for the offences charged against them beyond reasonable doubt?*

POINT:

9. During the course of the trial, the prosecution has examined PW-1 who is the panch witness for confession cum seizure panchanama, has turned hostile to the case of the prosecution and deposed that they do not know LW2, about long back, the police have obtained his signatures on Blank papers and he does not know the accused. Through him Ex. P1 the signature on confession cum seizure Panchama is being marked.

10. PW2/S. Srinivas who is a Gazetted Officer has deposed that on 23-08-2017 at 10.40 Am on credible information he along with his staff on collecting the panch witnesses and proceeded to the scene of the offence and found one person suspicious and intercepted him and served a search memo and conducted search and on search they found 240 grams of Dry Ganja. Later conducted Panchanama and drew two samples and seized the contraband and later LW5 issued COR and proceeded with the investigation. Through him, Ex. P2 Panchanama is marked.

During cross-examination, he testified that no consumers were present and that no sale proceedings were seized and further that no independent witnesses were examined.

11. PW-3 who is the investigating officer has deposed merely as to the process of investigation and recorded the details pertaining to seizure. Through him Ex. P3 COR, Ex. P4 Letter of Advice, Ex. P5 CE Report and Mo1 are being marked. During his cross-examination, he testified that no sale proceedings were seized and that no neighbours were examined and no independent witnesses were examined.

12. The case of the prosecution is that the accused No. 1 and 2 have committed an offence Punishable U/Sec.20 (i) (a) and 20 (b) (ii) (A) of NDPS Act, 1985. Accordingly, the prosecution has to prove that the accused persons had produced, manufactured, stored, manufactured, possessed, collected, purchased, sold and transported such narcotic drug or any psychotropic substance that comes under the NDPS Act.

13. In the facts and circumstances of this case and upon scrutiny and evaluation of evidence on record, it could be seen that the panch for the scene of offence cum seizure itself has turned hostile to the case of the prosecution and did not provide any incriminating material as such. It is the contention of the prosecution is that LW-3 and PW-2 seized the contraband from the possession of the accused and drawn two samples out of the same. Further, it

may be seen from the prosecution evidence that there is no detailed description with regard to the contraband and also there is no rough sketch pertaining to the scene of offence. There is no material on record to corroborate the version of PW-3 with regard to the seizure of contraband from the possession of the accused persons. There is no evidence to prove that accused No. 1 and 2 were in possession of dry Ganja. This court is of the opinion that it is not proper to convict the accused persons based on the sole testimony of PW-3 who is the investigating officer which is not sufficient to prove the guilt of the accused for the offence alleged against him. Thus, the prosecution has failed to prove the charge beyond reasonable doubt. Hence, the accused No. 1 and 2 are entitled to acquittal.

14. In the result, the accused No. 1 and 2 are found not guilty of the offence punishable U/Sec.20 (i) (a) and 20 (b) (ii) (A) of NDPS Act, 1985 and are accordingly acquitted U/Sec.248 (1) of Cr.P.C. Their bail bonds shall stand cancelled. The bail bonds of the accused and his sureties shall stand discharged. The unmarked case property if any shall be returned to its owner on proper identification and acknowledgement, after appeal time. The other case property i.e. loose dry Ganja shall be destroyed after appeal time

Typed to my dictation by stenographer, corrected and pronounced by me in the open court on this the 17th day of January 2024.

VI ADDL METROPOLITAN MAGISTRATE

**-CUM- II ADDL. JUNIOR CIVIL JUDGE
MEDCHAL-MALKAJGIRI DISTRICT
UPPAL AT L.B. NAGAR**

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

FOR PROSECUTION:

PW1 – K. Deepak Kumar
PW2 – S. Sreenivas
PW3 – K. BalaKrishna

FOR DEFENCE:

-None-

EXHIBITS MARKED

FOR PROSECUTION:

Ex. P1 Signature on Confession cum seizure panchanama of PW1
Ex. P2 Panchanama through PW2
Ex. P3 COR through PW3
Ex. P4 Letter of Advice through PW3
Ex. P5 CE Report through PW3

Material objects marked:

FOR PROSECUTION:

MO1 is Seized samples

FOR DEFENCE: -NIL-

**VI ADDL METROPOLITAN MAGISTRATE
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