

MHST010012162019



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, SATARA
Spl.NDPS Case NO.2 of 2019.

State of Maharashtra

... Complainant

Vs.

Laxman Jadhav & Ors.

... Accused.

Coram: Mr. S. R. Tamboli,
The Addl. Sessions Judge, Satara,

:: ORDER BELOW EXH. 121 ::

1. In the present application, the prosecution has prayed for permission to examine Mr. V. S. Madke, the then Judicial Magistrate First Class, Satara.
2. Ms. G. M. Lakade, learned APP for the State, submitted that on 13/02/2019, Mr. V. S. Madke, J.M.F.C., Satara, prepared the inventory of the seized muddemal and separated 15 samples. The said samples bear the signature of Mr. V. S. Madke. The IO has identified his signature. However, the inventory certificate is not on record. The preparation of the inventory is disputed by the accused. Hence, examination of Mr. V. S. Madke is necessary. She, therefore, prayed for permission to examine him under Section 348 of the BNSS.
3. Per contra, Mr. Lomate, learned counsel for the accused,

submitted that no inventory was prepared in the present case. The certified list of samples, photographs, or any record of the application forwarded to the Magistrate under Section 52A of the NDPS Act has not been placed on record. It is necessary for the Investigating Officer to make an application to the Judicial Magistrate to certify the inventory of the said narcotic drugs, to certify the photographs of the seized contraband, and to certify the list of samples. The prosecution is merely assuming that the inventory was prepared; however, the corresponding sample list has not been placed on record. The prosecution has failed to bring on record the primary evidence of the inventory and list of samples and has failed to produce the inventory and certified sample list. The prosecution cannot cure defects in the investigation. Hence, he prayed for dismissal of the application.

4. In the present case, the prosecution has examined the Investigating Officer. He has stated that he produced the muddemal before Mr. V. S. Madke, J.M.F.C., Satara, who prepared the inventory. He has also identified the signature of Mr. V. S. Madke on the samples of ganja. As the accused have disputed the same, the evidence of Mr. V. S. Madke, J.M.F.C., Satara, is necessary for the just decision of the case. The prosecution is not seeking to create any new evidence.

5. In this context, it would be fruitful to refer to the decision of the Hon'ble Supreme Court in the case of Rajendra Prasad v. Narcotic Cell **Rajendra Prasad VS The Narcotic Cell Through its Officer in Charge, Delhi**, MANU/SC/0397/1999, wherein it has been observed as under,

“8. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not 'fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

9. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can before-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

6. The ratio laid down in the aforesaid case clearly shows that, for the just decision of the case, the Court can examine a witness if no prejudice is caused to the accused. In the present case, only Mr. V. S. Madke, J.M.F.C., Satara, can throw light on the manner of preparation of the inventory. Hence, this Court finds it proper to allow the application.

7. Accordingly, the application is allowed. Issue summons to Mr. V. S. Madke, J.M.F.C., Satara, under Section 348 of the BNSS.

Date- 09/02/2026.

(S.R.Tamboli)
District Judge-2 & A.S.J.,Satara.