

HIGH COURT OF MADHYA PRADESH JUDICATURE
AT JABALPUR
Criminal Appeal No. 1890/2006

PRESENT :

HON'BLE SHRI JUSTICE **G.S. Solanki**

Shriram Gupta S/o Ram Lakhan Gupta
Vs.
State of Madhya Pradesh

Shri Manish Datt, learned counsel for the
appellant.

Shri P.C. Jain, learned Panel Lawyer for the
respondent/State.

Date of hearing: 13/01/2011
Date of Judgment: 29/06/2011

J U D G M E N T

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure being aggrieved by the impugned judgment dated 26.9.2006 passed by the learned Special Judge, (Constituted under the provisions of Narcotic Drugs and Psychotropic Substances Act), Rewa in Special Case No.7/2006 whereby the appellant has been convicted for offence punishable under Section 8(c) read with Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') and sentenced to Rigorous Imprisonment for 10 years and fine of Rs. One lac.

2. It is undisputed that co-accused Hanif Khan S/o Hasan Khan, Duwari @ Hubri S/o Umar Mohammad @ Mahavat and Allu @ Rambihari S/o Ramsalone were declared absconded by the police and only the present appellant has been charge-sheeted before the trial Court.

3. Prosecution case in short is that on 27.1.2006, R.B. Sharma (PW6), Station House Officer of Police Station Sohagi during course of patrolling in the night, stopped a Jeep bearing Registration No.MP-17B/6703 near the RTO Barrier, which was driven by appellant Shriram Gupta. It is alleged that on search one quintal thirty seven kilograms and five hundred grams of contraband article (*Ganja*) was found in the aforesaid jeep. Same was seized before the panch witnesses Padmakar Singh (PW1), Santosh (PW3), and Pannalal Singh (PW5) alongwith a Marshal Jeep No. MP-17B/6703 and driving license of the appellant and other papers vide Ex.P/8. It is further alleged that before seizure, a search panchnama Ex.P/3 was prepared before the panch witnesses. One Aditya Kumar Gupta (PW2) was called for weighing the contraband article, who weighed five bags of seized contraband *Ganja*. Sample of 100 gm. *ganja* from each bag was extracted and sealed. Samples were numbered as 'A/1 to E/1'. Remaining articles (*ganja*) were filled in the bags and also numbered as 'A to E' Weighing panchnama prepared before the panch witnesses is Ex.P/6 and another panchnama regarding sealing the articles was

prepared as Ex.P/7. Thereafter, appellant was arrested and arrest memo vide Ex.P/9 was prepared and then Dehati Nalisi Ex.P/16 was also prepared by seizing officer R.B. Sharma (PW6). Further investigation was done by G.P.Tiwari (PW7) and registered an offence under Section 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and recorded the statements of panch witnesses and seizing officer and made a *Farari* panchnama of absconded accused. Samples were sent for chemical examination to the Forensic Science Laboratory, Sagar alongwith the memo of Superintendent of Police, Rewa, through Omprakash Tiwari (PW4). Assistant Chemical Examiner of Forensic Science Laboratory, Sagar opined that samples were contraband article (*ganja*). His report is Ex.P/17. Since other co-accused were not available and absconded, appellant alone was charge-sheeted by Special Judge, Rewa.

4. Learned Special Judge framed the charges under Section 8/20(b)(ii)(C) of the NDPS Act against the appellant. Appellant abjured the guilt and pleaded false implication. He further pleaded that he was waiting for a vehicle to go to Allahabad, at the same time one Marshal Jeep came there. One head constable Tilakraj called the three persons who were sitting in the Marshal Jeep but they fled away from the spot. In-charge Officer, R.B. Sharma, called the appellant and took him to police station and seized his driving license from his pocket. Dinesh Singh (DW1) examined as a defence witness of the appellant.

5. On appraisal of evidence on record, Special Judge convicted and sentenced the appellant as mentioned hereinabove.

6. Learned counsel for the appellant submitted that the appellant has been falsely implicated. He further submitted that panch witnesses had not supported the prosecution case. The prosecution failed to prove the fact that contraband article seized from appellant was in excessive possession. He further submitted that prosecution failed to produce the remaining contraband article before the trial Court. He also submitted that there is an inordinate delay in sending the alleged contraband article for chemical examination and there is no proper explanation in this behalf, therefore, he prays for setting aside the impugned judgment and sentence passed by the trial Court. He further prays for acquittal of the appellant. Learned counsel for the appellant placed reliance on **(2004) 10 SCC 562, Jitendra and another Vs. State of M.P.**

7. On the other hand, learned counsel for the respondent/State justified and supported the impugned judgment of the trial Court.

8. I have heard the parties and perused the impugned judgment, evidence and other material on record.

9. R.B. Sharma (PW6) deposed that on 27.1.2006 at about 3.45 a.m. he was checking the vehicle near the RTO Barrier, Sohagi. At about 4 O'clock, a Marshal Royal Delux Jeep bearing registration No. MP-17B/6703 came there which was driven by appellant Shriram Gupta. On checking he found that contraband article (*ganja*) was filled in bags then he called panch witnesses and made a search in front of them and seized the contraband article (*ganja*). He also called Aditya Kumar (PW2) for weighing the seized article and made a panchnama Ex.P/14 in this regard. After weighing, *ganja*, was found one quintal thirty seven kilograms and five hundred grams. Samples of 100 grams from each bag was extracted and sealed them vide Ex.P/7. Thereafter, he sealed the remaining contraband article and also seized the papers and jeep vide seizure memo Ex.P/8. Appellant was arrested and his arrest memo vide Ex.P/9 was prepared. Superior Officer, SDO (P) prepared Dehati Nalisi Ex.P/16. He further deposed that he handed over the HC 41 Indrabali (diary) to the officer and went for the search of absconded accused. He further deposed that samples were sent to Forensic Science Laboratory, Sagar for chemical examination and report of chemical analyst Ex.P/17 was received in which contraband article *ganja* was found in all samples.

10. It is true that none of panch witnesses like Padmakar Singh (PW1), Santosh (PW3) and Pannalal Singh (PW5) have supported the seizing officer. All of

them turned hostile. On the contrary, Padmakar Singh (PW1) deposed that he was called by police at police station and signatures were taken on all papers which were prepared by the police.

11. G.P. Tiwari (PW7) deposed that he registered the crime against the appellant on the basis of Dehati Nalisi Ex.P/16 and recorded the statements of panch witnesses and seizing officer R.B. Sharma (PW6). He admitted in his cross-examination that seizing officer R.B.Sharma when returned alongwith seized vehicle at police station then this witness told him that one Duwari, who was driving the vehicle, had fled away with the vehicle. He further admitted that R.B.Sharma told him that appellant was also found in the said vehicle alongwith other persons. He further admitted that driving license of appellant was taken from his pocket.

12. Shri R.B. Sharma (PW6), Seizing Officer himself admitted in his cross-examination in para-8 that when he reached near the vehicle he had not seen the appellant getting down from the vehicle. He further admitted that appellant was standing near the vehicle. He further admitted that since appellant standing near the vehicle, therefore, he assumed that he would have been got down from the vehicle.

13. On careful scanning of evidence of R.B. Sharma (PW6) and admission in cross-examination as mentioned above alongwith the

admission of G.P. Tiwari (PW7), it reveals that R.B. Sharma only saw that appellant was standing near the vehicle and according to G.P. Tiwari (PW7), driving license of appellant was taken at police station then trial Court committed the illegality in appreciating the evidence regarding the fact that driving license of appellant was seized from the vehicle, as well as the fact that vehicle was driven by appellant.

14. In these circumstances, defence of appellant became probable that he was standing there for going to Allahabad. This fact is further probablized by defence witness Dinesh Singh (DW1), who deposed that during checking of the vehicle, one Duwari, who driving the vehicle, stopped the vehicle and fled away. He further deposed that appellant Shriram Gupta was also standing near the check post, therefore, police caught him. He further deposed that at the same time when police asked Shriram Gupta why he was standing, he told the police that he was waiting for a vehicle, for going to Allahabad. During cross-examination Dinesh Singh (DW1) remains undeviated from the aforesaid statement. He was a guard at tower of Tata Mobile Company which was situated near RTO Barrier, therefore, his presence is also established.

15. It is well established principle of law that defence witness will also be taken into consideration and appreciation of his statement should also be at par to the witness produced by the prosecution.

Considering the aforesaid evidence on record, I am of the view that the trial Court failed to appreciate the evidence of defence witness in its proper perspective. In these circumstances, I am of the view that prosecution failed to prove the fact that vehicle was driven by appellant and appellant was found in possession of contraband article (*ganja*) about one quintal thirty seven kilograms and five hundred grams.

16. On perusal of the statements of R.B. Sharma (PW6) and G.P. Tiwari (PW7) and other material on record, I am of the view that prosecution further failed to prove that remaining part of contraband article was produced before the trial Court during trial and same is exhibited. It also reveals from the record that sample was sent to FSL, Sagar on 4/2/2006 while seizure was made on 27/1/2006 about 9 days belated and there is no explanation on record that same was kept intact. On the contrary, witness G.P. Tiwari (PW7) admitted in his cross-examination in para-7 that he was unable to say that article shown in Malkhana Register Ex.P/23, when was sent to Forensic Science Laboratory, Sagar for examination. In these circumstances principle laid down by the Supreme Court in **Jitendra and another's case**(supra) is also applicable to the instant case.

17. In the result, I am of the view that panch witnesses have been turned hostile. Seizing officer

appears to be unbelievable on the point of seizure of contraband article and driving license of appellant. Further non-production of seized article during trial, I am of the view that conviction and sentence recorded by the trial Court is not sustainable in law.

18. Thus, the appeal is allowed. Conviction and sentence recorded by the trial Court is hereby set aside. The appellant is in jail. He be set free forthwith, if not required in any other case.

19. Since it is admitted fact on record that co-accused like Hanif Khan S/o Hasan Khan, Duwari @ Hubri S/o Umar Mohammad @ Mahavat and Allu @ Rambihari S/o Ramsalone shown absconded, therefore, articles seized during investigation will be disposed of after trial of aforesaid absconded accused persons.

(G.S. Solanki)
JUDGE

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