

**IN THE COURT OF THE SESSIONS JUDGE-CUM-
SPECIAL JUDGE UNDER THE N.D. & P.S. ACT,
KHURDA AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.

Dated, Bhubaneswar the 30th June'14.

T.R. No. 18 of 2009.

(Arising out of P.R. No.23/2009-10.)

S T A T E

- V e r s u s -

Mahendra Jena, aged about 35 years, S/o. Late Pravakar Jena of Vill. - Gada Srirampur, P.S. - Baliana, Dist. - Khurda.

... **Accused.**

Counsel:

For prosecution	--	Shri B.B. Mohanty, (P.P. in charge).
For defence	--	Shri R.N. Samantaray (S.D.C.).

Offence under section 21(b)(ii)(A), N.D. & P.S. Act, 1985.

Date of argument : 20.06.2014.

Date of judgment : 30.06.2014.

J U D G M E N T

The accused stands charged for the offence punishable under section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

2. Factual matrix leading to the case of the prosecution

is that on 11.11.2009 at about 7.30 A.M., while the excise staff were patrolling on Puri canal road, they found the accused coming with a plastic jari bag. Suspecting the accused, the excise officials detained him. After giving their personal search, they asked the accused for his option, whether to be searched before a Gazetted Officer or a Magistrate; but the accused exercised his option to be searched by the excise staff. So, the S.I. of Excise, after observing formalities, searched the accused and recovered a plastic jari bag containing 1 Kg of Ganja (Cannabis). From the taste and smell, she could confirm that the same was Ganja. She weighed the same. Then, she made seizure of the said Ganja, along with the plastic jari bag, from the possession of the accused. She reported to her superior authority, as required under the provisions of the Act and Rules. She also took sample of the seized Ganja and resealed the same. She produced the sample before the learned S.D.J.M., Bhubaneswar for sending the same for chemical examination. The report of the Chemical Examiner was received. She examined the witnesses and visited the spot. After completion of inquiry, she submitted Prosecution Report. Hence the prosecution case.

3. Plea of the accused is squarely denial to the charge levelled against him.

4. The main point for determination is :

Whether the accused was in unlawful possession of one kilogram of Ganja (Cannabis), in contravention of section 8 of the Act ?

5. Prosecution has examined three witnesses, out of whom P.W.1 is an outsider; P.W.2 is an Excise Constable; and P.W.3 is the Inspector of Excise. Defence has examined none.

6. It is well settled law that the evidence of official witnesses cannot be discarded merely because they are official witnesses. On the other hand, their evidence should be scrutinized with due care and caution. It is also well settled law that the Court should separate the grain from the chaff. In respect of cases of this nature, the Court has to adhere to a meticulous examination of the evidence, as the offence under the Act has got strict liability. Bearing in mind the above principles, let me find out if the prosecution has been able to bring home the charge against the accused.

7. P.W.3, who is the I.O. in this case, stated that on 11.11.2009 at 7.30 A.M., while she was conducting patrolling, along with her staff, near Baliana Block, she saw that the accused was coming with a white coloured jari bag in his hand. Out of suspicion, she detained him and gave him her identity. She further stated that she searched the accused and the bag carried by him and recovered 1 Kg of Cannabis from the bag in his possession. In para-5 of her examination-in-chief, she stated that before search, she had given option to the accused to give consent whether he wanted to be searched before her or before a Gazetted Officer to which he gave consent to be searched by her. She proved the option given by the accused vide Ext.3. As the accused was illiterate, she made endorsement below the option

exercised by the accused. She proved her endorsement vide Ext.3/2 and her attestation to the LTI of the accused vide Ext.3/3. On going through the document, Ext,3, it appears that she has offered the option; but the exercise of option by the accused does not appear to be made then and there, since the endorsement made by P.W.3, in view of the fact that the accused is illiterate, seems to have been made afterwards. The gap between the LTI given at the bottom part of the paper and the signature made by the S.I. of Excise has little space to accommodate the write up. Be that as it may, the formalities under section 50 of the Act seems to have not been proved by P.W.3 above board. As such, the evidence of P.W.3 is not clear and cogent with regard to formalities of search as required under section 50 of the Act.

8. P.W.3 further stated that she took sample of the recovered Cannabis and burnt a small quantity thereof and from the size, texture, smell and colour and from her ten years of experience, she could know that the same is Ganja (Cannabis). She took weight, which became 1 Kg. She again kept the Ganja inside the jari bag and resealed the same. She stated to have prepared the seizure list and, after preparation of the same, she read over and explained the contents thereof to the witnesses and the accused. The accused put his LTI. She proved the seizure list vide Ext.1/1 and her signature vide Ext.1/3. She also proved her endorsement therein vide Ext.1/4 and the attestation of the LTI of the accused vide Ext.1/5. There was fruitful cross-examination.

9. However, on going through Ext.1/1, it appears that

on that day, at 7.30 P.M. evening, seizure was made. Again, at the top portion, it has been written that on that day at 7.30 A.M. search was made. When P.W.3 is an official witness, how such discrepancy has crept in between her statement and seizure list as to the exact time of search and seizure of Cannabis from the possession of the accused. Apart from this, she stated to have taken sample and sent the same to the State Drug Testing & Research Laboratory, Bhubaneswar for chemical examination. After the property is received, she produced the seized jari bag vide M.O.I; but the jari bag when produced in the Court was found open. The Court is not concerned about the same because the mal item number has already been mentioned; but the paper seal, as put by her, as per her statement, was not found on M.O.I. Thus, the evidence of P.W.3 is not clear, cogent and consistent to prove the factum of search and seizure of Cannabis from the possession of the accused. Hence, her statement requires corroboration from the evidence of others.

10. P.W.2 is another official witness. He stated that at 7.30 A.M., while they were patrolling, found the accused at the spot, who was in possession of a jari bag. Then, the S.I. of Excise, after giving personal search, searched the accused. After opening jari bag, Cannabis was recovered and some sample was taken by the S.I. of Excise. Then, the seized jari bag containing Cannabis was resealed by the S.I. of Excise. He further stated that the S.I. of Excise prepared the seizure list. He proved the seizure list, Ext.1/1, and his signature, Ext.1/2. In cross-

examination, he stated that they went at 6.45 P.M. and reached there at 7 P.M. Thus, his statement is not clear and consistent as to when they made search and seizure. On the other hand, as has been discussed above, the seizure list itself is self-contradictory as to the exact time of search and seizure. Moreover, P.W.2 is totally silent about the option offered to the accused to be searched before a Gazetted Officer or a Magistrate. Therefore, the evidence of P.W.2 is equally crippled for not proving the valid search and seizure of Cannabis from the possession of the accused in terms of the procedure enshrined under the Act and the Rules. Thus, P.W.2 has failed to corroborate the evidence of P.W.3 about search and seizure of 1 Kg of Ganja from the possession of the accused.

11. P.W.1, who is an outsider, has totally denied about search and seizure of Cannabis from the possession of the accused. According to him, while he was collecting flowers in the morning, excise officer called him to become a witness and asked him to sign. He signed vide Ext.1. He has been cross-examined by learned P.P., he denied the entire search and seizure of 1 Kg of Cannabis from the possession of the accused. He has stated to have not stated before the excise officer about search and seizure. P.W.3 has not been confronted with the evidence of P.W.1 so as to test the latter's veracity. On the other hand, P.W.1 being an outsider has not lent any corroboration to the evidence of P.Ws.2 & 3 as to search of the accused and seizure of 1 Kg of Cannabis from his possession. The chemical examination report

has been proved; but it is like fish out of water, when search of the accused and seizure of Cannabis from his possession remains far from proof.

12. In view of the aforesaid analysis, I find that the prosecution has failed to establish by cogent, consistent and trustworthy evidence that the accused was carrying 1 Kg of Ganja in a jari bag and, after following due procedure of search and seizure, it was recovered from him. On the other hand, prosecution has failed to prove beyond reasonable doubt that the accused was in illegal and conscious possession of Ganja (Cannabis).

13. In the result, therefore, I hold the accused not guilty of the offence punishable under section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and I acquit him under section 235(1) of the Cr. P.C. He be set at liberty forthwith if his detention is not required in connection with any other case.

14. The seized Ganja be handed over to the Superintendent of Excise, Khurda for destruction in accordance with law and the broken seals, etc. be destroyed on expiry of four months of period of appeal if no appeal is preferred; in case of appeal, the same be dealt with as per the orders of the Hon'ble Appellate Court.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.**

30.06.2014.

Dictated, corrected by me and pronounced in the open Court this day the 30th June, 2014.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
30.06.2014.**

List of witnesses examined for prosecution.

P.W.1 -- Sukanta Kumar Patra,
P.W.2 -- Paramananda Pattnaik &
P.W.3 -- Krishna Nayak.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1 -- Signature of P.W.1 in seizure list,
Ext.1/1 -- Seizure list,
Ext.1/2 -- Signature of P.W.2 in Ext.1/1,
Ext.1/3 -- Signature of P.W.3 in Ext.1/1,
Exts.1/4 & 1/5 -- Endorsement of P.W.3 in Ext.1/1,
Ext.2 -- Chemical Examination Report,
Ext.3 -- Option Memo,
Ext.3/1 -- Signature of P.W.3 in Ext.3,
Ext.3/2 -- Endorsement of P.W.3 in Ext.3,
Ext.3/3 -- Endorsement of P.W.3 in Ext.3,
Ext.4 -- Sketch Map &
Ext.5 -- Detailed Report.

List of documents admitted in evidence for defence.

Nil.

List of M.Os. marked for prosecution.

M.O.I -- Seized jari bag &
M.O.II -- Paper packet containing broken brass seal.

List of M.Os. marked for defence.

Nil.

**Sessions Judge-cum-Special Judge,
Khurda at Bhubaneswar.
30.06.2014.**