

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ CRIMINAL APPEAL No.78 OF 2013

% Dated 27.11.2025

Jadhav Gopal S/o.Chennu,
Aged: 29 years, Caste: Lambada
Occ: Agriculture,
R/o.Nimmatanda Grampanchayat,
Kothapalli.

....Appellant

VERSUS

\$ The State of A.P. through
The Public Prosecutor,
High Court of AP, Hyderabad.

... Respondent

! Counsel for Appellant : Mr.Vivek Jain

^ Counsel for Respondent : Mr. M. Vivekananda Reddy

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2024) 11 SCC 421
2. (2021) 4 SCC 1
3. (2008) 4 SCC 668
4. (1990) 2 SCC 409
5. (1999) 6 SCC 172
6. (2011) 1 SCC 609
7. (2016) 11 SCC 687
8. (2010) 12 SCC 495
9. (2000) 2 SCC 513
10. 2002 (2) ALD CrI. 298 (SC)
11. 2011 (1) ALD (CrI.) 781 (A.P.)

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**CRIMINAL APPEAL No.78 of 2013****JUDGMENT:**

This Criminal Appeal has been filed by the appellant/accused aggrieved by the judgment passed by the learned Special Judge for trial of Cases under N.D.P.S. Act-cum-I Additional Sessions Judge, Adilabad (for short, the 'trial Court'), dated 17.01.2023, in N.D.S.C.No.1 of 2012, where under, the appellant was found guilty for the offence under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months.

2. For the sake of convenience, the parties herein are referred to as they were arrayed before the trial Court.

3. **The case of the prosecution in nutshell:**

3.1. On 02.10.2009, upon receiving credible information about illegal cultivation of ganja, LW.5 along with staff and panch witnesses proceeded to agricultural land in Sy.No.10/185/E, Ac.1-32 guntas, Nimmathanda Village, Sirpur (U) Mandal. The accused Jadav Gopal was found in the field and stated that although the land stands in the name of his wife Jadav Sangeetha Bai, he attends to all

agricultural operations. On inspection, about 3,500 ganja plants (5–10 ft.) were found intercropped with cotton. 100 grams of ganja samples were drawn under a panchanama in the presence of mediators and the Tahsildar, and the remaining plants were destroyed on the spot. The accused was apprehended at the scene. Subsequently, LW.5 registered PR No.258/2009-10 for the offence under Section 8(b) r/w 20(a) of the NDPS Act, 1985, and produced the accused before the Court for judicial remand. The samples were sent for chemical analysis, and the Chemical Examiner, Nizamabad, issued CE Report No.1012/09-1 dated 15.10.2009 confirming that the sample tested positive for ganja. The Adangal/Pahani for 2009–10 recorded the accused's wife as the pattadar of the land in Sy.No.10/185/E.

3.2. Basing on the said complaint, COR.No.258 of 2009 was registered against the accused for the offence under Section 8(b) read with 20(a) of NDPS Act and the Investigating Officer after conducting investigation filed the charge sheet. The trial Court has taken cognizance of the said offence and numbered it as N.D.S.C.No.1 of 2012.

3.3. On behalf of the prosecution, PWs.1 to 4 were examined, Exs.P1 to P7 got marked and M.Os.1 and 2 were marked. On behalf of defence, DW.1 was examined and no documents were marked.

3.4. Learned Sessions Judge after taking into consideration the oral and documentary evidence on record and after hearing the parties, convicted the accused for the offence under Section 20(b)(i) of NDPS Act as stated above. Aggrieved by the same, the accused has preferred the present appeal.

4. Heard Sri G. Aravind, learned counsel representing Mr. Vivek Jain, learned counsel for the accused, and Sri M. Vivekananda Reddy, learned Assistant Public Prosecutor appearing for the respondent-State.

5. **Submissions of the learned counsel for the accused:**

5.1. Learned counsel submitted that the accused has not committed any offence, much less the offence levelled against him under the NDPS Act. The prosecution failed to produce any evidence to prove the offence, however, the trial Court convicted the accused only based upon the confession statement given by accused at the time of recording panchanama on 02.10.2009, though the confession statement cannot be taken into consideration for convicting the accused. The confession statement is inadmissible as per the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872.

5.2. The Investigating Officer has specifically stated that the entire process of search, seizure and destroying the crime property is video graphed covering the entire process, but no such video graph was

filed. PW.1 in his evidence specifically stated that three to four persons removed the ganja plants and that the excise officials took the photographs of removal and burning of ganja plants. However, the prosecution has failed to produce the said photographs pertaining to removal and burning of ganja plants to prove the case against the accused that the accused raised ganja plants in his agricultural land, further the said persons, who removed ganja plants from the land, were not examined. PW.3 in his cross-examination stated that they have photographed plucking of ganja plants in cell phone, but could not save it. In the cross-examination, PW.4 specifically admitted that they have obtained photographs of heaps of ganja plants and burning the same, but the photographs are not filed before the Court. In spite of the specific admissions made by PWs.1, 3 and 4 about non-filing of the photographs by the prosecution about the removal and burning of ganja and in the absence of any direct evidence, the trial Court came to a conclusion that the accused cultivated the ganja plants solely basing upon the confession statement given by the accused at the time of recording the panchanama on 02.10.2009.

5.3. He further submitted that PW.4 in his evidence stated that after receiving the information about the illegal cultivation of ganja in the land in Sy.No.10/185/E of Nimmatanda of Kothapali, he informed the same to the Superintendent over phone. He also

admitted in his cross-examination that as soon as he received the information, he reduced into writing in the Station Diary, but the extract of the General Diary is not filed before the Court.

5.4. Learned counsel further contended that the Investigating Officer only sent small quantity of ganja in two packets, each weighing 50 grams, to the F.S.L. for chemical examination. Basing on the said small quantity, the trial court came to a conclusion that the accused has committed the offence and that he raised 3500 plants of ganja in the agricultural land and contravened the provision of Section 8(b) of the Act in the absence of any iota of evidence. In this case, the police have not followed the mandatory procedure prescribed under sub-Section 2 of Section 42 of the NDPS Act. Hence, the impugned judgment passed by the trial Court is liable to be set aside.

5.5. In support of his contention, he relied upon the following judgments.

- i) Rajkumar Hariram Gameti v. State of Gujarat and another¹; and**
- ii) State v. Ravi Kumar @ Toni (Crl.L.P.No.340 of 2019 on the file of the High court of Delhi at New Delhi).**

¹ (2024) 11 SCC 421

6. **Submissions of learned Assistant Public Prosecutor:**

6.1. *Per contra*, learned Assistant Public Prosecutor submitted that the accused has committed the grave offence and contravened the provision of Section 8(b) of the NDPS Act. The accused had cultivated the ganja in his agricultural lands. The trial Court after evaluating the oral and documentary evidence on record rightly convicted the accused for the offence under Section 20(b)(i) of the NDPS Act and the trial Court has given cogent findings and there are no grounds to interfere with the impugned judgment passed by the trial Court and the same is liable to be dismissed.

Analysis :

7. Having considered the rival submissions made by the respective parties and on perusal of the material available on record, it reveals that on 02.10.2019, PWs.2 to 4 have received the information about cultivation of ganja plants in Sy.No.10/185/E and they have entered into the said land along with two panch witnesses. According to the prosecution, the wife of the accused is the owner of agricultural land to an extent of Ac.1.32 gts. and the accused had raised ganja plants. Further, the villagers of the accused removed 3,500 ganja plants and burnt and collected 100 grams of ganja into two packets i.e., 50 grams each. PW.1 in his evidence and PWs.3 and 4 in their cross-examination specifically deposed that excise

officials have taken photographs of removal of ganja plants and also burning the same. However, the said photographs were not filed before the trial Court.

8. It is relevant to mention that the prosecution has not examined the villagers, who were present at the time of removal and burning of ganja plants. In the absence of any independent evidence, the trial Court came to a conclusion that the accused is found guilty for the offence under Section 20(b)(i) of the NDPS Act, solely basing upon the confession statement given by the accused at the time of recording panchanama on 02.10.2019. Admittedly, the land belongs to the wife of the accused and he is doing cultivation.

9. It is trite law that the confession statement given by the accused is inadmissible under law, especially in view of the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872.

10. In **Rajkumar Hariram Gameti** *supra*, the Hon'ble Supreme Court has reaffirmed the law declared in **Tofan Singh v. State of Tamil Nadu**², where a three-Judge Bench reconsidered the earlier decisions in **Kanhaiyalal v. Union of India**³ and **Raj Kumar Karwal v. Union of India**⁴ and held that officers empowered under Section 53 of the NDPS Act are "police officers" for the purposes of Section 25

² (2021) 4 SCC 1

³ (2008) 4 SCC 668

⁴ (1990) 2 SCC 409

of the Evidence Act, rendering any confessional statement made to them inadmissible. It was further clarified that statements recorded under Section 67 of the NDPS Act cannot be treated or relied upon as confessional statements for the purpose of convicting an accused under the NDPS Act.

11. In the present case, the allegation of cultivating 3500 ganja plants is unsupported by any independent evidence, as neither photographs nor statements of the villagers who purportedly assisted in removal and burning of the ganja plants. The conviction rests solely on the accused's confessional statement and in view of above mentioned principles such statements made to officers empowered under Section 53 of the NDPS Act are inadmissible and cannot form the basis of conviction. Hence, the principles laid down squarely apply to the case at hand.

12. In **Ravi Kumar @ Toni** *supra*, the High Court of Delhi upheld the acquittal, observing several fatal lapses in the prosecution case, such as non-compliance with mandatory safeguards under Sections 50 and 42 of the NDPS Act, failure to properly inform the accused of his statutory rights, conducting a post-sunset search without a warrant or recorded reasons, and omission to join independent witnesses despite their availability. The Court also highlighted contradictions in police testimonies and the absence of supporting

material such as CCTV footage or videography, indicating a poor investigation. Relying on **State of Punjab v. Baldev Singh**⁵, **Vijaysinh Chandubha Jadeja v. State of Gujarat**⁶, and **State of Gujarat v. Jagraj Singh**⁷, it held that strict procedural compliance is essential and the lapses rendered the recovery doubtful. Finding no perversity in the Trial Court's reasoning, the High Court dismissed the State's leave petition.

13. In the present case, the prosecution has failed to produce independent or reliable evidence, no villagers who purportedly removed and burnt the ganja plants were examined, and the case rests solely on the accused's confession. As held in **Ravi Kumar supra**, such lapses render the prosecution version doubtful, and the conviction cannot be sustained.

14. In **State of Karnataka v. Dondusa Namasa Baddi**⁸, the Hon'ble Supreme Court dismissed the State's appeal after finding complete non-compliance with Section 42(2) of the NDPS Act. The police had neither recorded the information in writing nor forwarded it to their immediate superior, despite having ample time to do so. Referring to the Constitution Bench ruling in **Karnail Singh v. State**

⁵ (1999) 6 SCC 172

⁶ (2011) 1 SCC 609

⁷ (2016) 11 SCC 687

⁸ (2010) 12 SCC 495

of Haryana⁹, the Hon'ble Supreme Court reiterated that while delayed compliance may be condoned if explained, total non-compliance is impermissible and renders the prosecution case unsustainable and further stated that the oral claims of compliance by the investigating officer could not substitute the mandatory statutory requirement, and therefore the acquittal was affirmed.

15. It is also relevant to mention that under Section 42 of NDPS Act, any information that is received and reduced into writing has to be informed to the superior officer within 72 hours and the copy thereof shall be sent to the official superior.

16. In the case on hand, PW.4 himself admitted that he informed regarding illegal cultivation of ganja to his superior officer on phone only and proceeded to the spot. Further, in the cross-examination, he stated that he received the information at about 8 a.m. on that day and the same was reduced into writing in the Station Diary, but the G.D. entry is not produced before the Court. From the evidence of PW.4, it is revealed that he has not sent the copy to his immediate superior officer, which proves that he has not followed the mandatory procedure prescribed under Section 42(2) of NDPS Act.

17. In **Union of India v. L.D. Balam Singh**¹⁰, the Hon'ble Supreme Court held that when it is not proved by the prosecution

⁹ (2000) 2 SCC 513

¹⁰ 2002 (2) ALD CrL 298 (SC)

that search and seizure was in compliance of Section 42 of the NDPS Act, it is fatal to the prosecution case.

18. Similarly, in **Shahidkhan v. Director of Revenue Intelligence, Government of India, Hyderabad and another**¹¹, the erstwhile High Court of Andhra Pradesh held that when the provisions makes it mandatory for informing superiors regarding information received, and no such proof is filed regarding information being passed on to the superior officer, it causes prejudice to the accused.

19. Admittedly, the procedure under Section 42(1) and (2) of the NDPS was not followed PW.4.

20. For the foregoing reasons as well as the principles laid down by the Hon'ble Supreme Court and also for violation of the procedures laid down, which is mandatory under Section 42(2) of the NDPS Act, the impugned judgment passed by the trial Court convicting the appellant/accused for the offence under Section 20(b)(i) of the NDPS Act is liable to be set aside.

21. In the result, the Criminal Appeal is allowed and the judgment passed by the learned Special Judge for trial of Cases under NDPS Act-cum-I Additional Sessions Judge, Adilabad, dated 17.01.2023, in NDPS S.C.No.1 of 2012 convicting the appellant/accused for the

¹¹ 2011 (1) ALD (CrL.) 781 (A.P.)

offence under Section 20(b)(i) of the NDPS Act is set aside and the appellant/accused is acquitted for the offence under Section 20(b)(i) of the NDPS Act and his bail bonds shall stand discharged.

Miscellaneous applications pending, if any, shall stand closed.

JUSTICE J.SREENIVAS RAO

Date: 27.11.2025

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