

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.56 OF 2009**

**Between:**

- 1) Shaik Meerabi (died).
- 2) Shaik Khasimbi

.... Appellants/A.1 and A.2.

*Versus*

The State of Andhra Pradesh, rep. by its  
Public Prosecutor, High Court of Andhra Pradesh.

... Respondent/Complainant.

DATE OF JUDGMENT PRONOUNCED: 18.12.2023

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

1. Whether Reporters of Local Newspapers  
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the  
Fair copy of the Judgment? Yes/No

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**A.V.RAVINDRA BABU, J**

**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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**! Counsel for the Appellants : Sri Siva Sankara Rao Borra.**

**^ Counsel for the Respondent : Public Prosecutor**

**< Gist:**

**> Head Note:**

**? Cases referred:**

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.56 OF 2009****ORDER:-**

Challenge in this Criminal Appeal is to the judgment in Sessions Case No.42 of 2007, dated 19.01.2009, on the file of Special Judge for NDPS Cases-cum-I Additional District & Sessions Judge, Ongole ("Special Judge" for short), whereunder the learned Special Judge found the accused Nos.1 and 2 guilty of the charge under Section 20(b)(ii)(B) r/w 8(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985 ("NDPS Act" for short), convicted them under Section 235(2) of the Code of Criminal Procedure) ("Cr.P.C." for short) and after questioning them about the quantum of sentence, sentenced A.1 to undergo rigorous imprisonment for four years and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for 15 days and sentenced A.2 to undergo rigorous imprisonment for two years and to pay fine of Rs.100/-, in default to suffer simple imprisonment for 15 days. The appellants herein are no other than A.1 and A.2 in the aforesaid Sessions Case.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the learned Special Judge for the sake of the convenience.

3) The case of the prosecution, in brief, according to the charge sheet filed by the Station House Officer, Prohibition & Excise, Kanigiri, is as follows:

On 18.06.2007 at about 3-30 p.m., Prohibition & Excise party proceeded to Kanigiri to Podili road to detect the Prohibition and Excise offences in a Government rented Jeep. They reached Kasireddy Nagar Bus Stop and found the accused in the standing position having the polythene gunny bags at their legs possessing with their right hands. On seeing the vehicle, they confused themselves. Prohibition & Excise party stopped the vehicle. When they questioned the accused about the contents, they replied that it contained Ganja. They did not reveal the source of Ganja. They revealed that they were waiting for auto to go to Kanigiri. Then L.W.1-K. Sreenivasulu, Prohibition & Excise Inspector, asked the passengers present at to act as mediators and two of them came forward and they are L.W.7-Ravoori Narayana Reddy and L.W.8-Golla Phani Kumar. L.W.1 asked the accused whether they wanted any other Gazetted Officer or Magistrate to search their polythene gunny bags, for which they replied that they may be searched before L.W.1 because he is also a Gazetted Officer. Then Prohibition & Excise party searched the gunny bags of A.1 and A.2 and found Ganja. The bag of A.1 was weighed as 4.200 kgs. The bag of

A.2 was weighed as 2.300 kgs. Prohibition & Excise Police drawn sample of 50 grams from each bag and sealed it. They obtained the signatures of the L.W.7 and L.W.8 on the mediatorsnama. L.W.1 arrested the accused after intimating to them about the grounds of arrest. L.W.6-A. Radha Krishna Murthy, Prohibition & Excise Sub- Inspector, Kanigiri, registered a case as PR.No.56 of 2007-08 and took up investigation. The accused were sent to the Court for remand. L.W.9-G. Muralidhar, Prohibition & Excise Inspector, Kanigiri, sent the samples to the chemical examiner, who opined that two samples are of Ganja. Hence, the charge sheet.

4) The learned Special Judge took cognizance of the case under Section 20(b)(ii)(B) r/w 8(c) of N.D.P.S Act. After appearance of the accused, copies of case documents were furnished to them as required under Section 207 of the Cr.P.C., and on hearing both sides, a charge under Section 20(b)(ii)(B) r/w 8(c) of N.D.P.S Act was framed and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

5) During the course of trial, the prosecution examined P.W.1 to P.W.5 and got marked Ex.P.1, Ex.P.1(a)&(b), Ex.P.1(c)&(d), Ex.P.2, Ex.P.3 and Ex.P.2(a) and M.O.1 to M.O.4. After closure of the evidence of prosecution, the accused were

examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which they denied the same and they did not let in any evidence.

6) The learned Special Judge on hearing both sides and on considering the oral as well as the documentary evidence, found A.1 and A.2 guilty of the charge, convicted and sentenced them as above. Felt aggrieved of the same, the unsuccessful A.1 and A.2 filed the present appeal.

7) During the course of appeal, A.1 died and the case against him was abated vide order, dated 14.07.2023. So, the present appeal is proceeded as against A.2 only.

8) Now, in deciding this Criminal Appeal, the points for determination are as follows:

(1) Whether the prosecution proved that A.2 was found in possession of 2.300 kgs. of Ganja on 18.06.2007 at 3-30 p.m., in the manner as alleged by the prosecution?

(2) Whether the judgment of the learned Special Judge, dated 19.01.2009 in S.C.No.42 of 2007, is sustainable under law and facts and whether there are any grounds to interfere with the same?

**Point Nos.1 and 2:-**

9) P.W.1 was the Prohibition & Excise Inspector. P.W.2 was the then Prohibition & Excise Sub-Inspector. P.W.3 was the

private car driver, who drove one of the vehicles of the Prohibition & Excise police party to the scene of offence. P.W.4 was the Prohibition & Excise Inspector, Kanigiri, who registered FIR basing on the mahazarnama. P.W.5 was the Prohibition & Excise Sub-Inspector, Kavali, who claimed to have participated in the raid.

10) The testimony of P.W.1, P.W.2 and P.W.5 is that on 18.06.2007 during routine raids conducted to detect Prohibition and Excise offences, they reached near the bus stop of Kasireddy Nagar. They noticed A.1 and A.2 each possessing respective polythene gunny bags in their hands. On seeing them, the accused tried to escape. They apprehended the accused and asked about the contents of the bags for which they revealed that they contained Ganja. Then they requested passengers present there to act as mediators and two persons among them viz., R.N. Reddy and E.P. Kumar (L.W.7 and L.W.8) came forward to act as mediators. Apart from this, P.W.1 intimated to A.1 and A.2 that he is a Gazetted Officer and if they need any other Gazetted Officer, he will secure their presence for which the accused replied that they can be searched before him and there is no need or necessity of another Gazetted Officer. They conducted search and found 4.200 kgs. of Ganja in possession of A.1 and 2.300 kgs. of Ganja in possession of

A.2. Samples of 50 grams each were lifted from the respective bags. M.O.1 is the contraband of A.1 and M.O.2 is sample. M.O.3 is the contraband of A.2 and M.O.4 is sample. A mahazarnama was drafted to that effect. Prohibition and Excise party and mediators signed and accused also put their thumb impressions. This is the sum and substance of the evidence of the above said witnesses.

11) Turning to the evidence of P.W.3, he deposed that he is a Jeep driver and that on 18.06.2007 he along with Excise Enforcement Police proceeded on patrolling duty and when they reached near Kasireddi Bus and found A.1 and A.2 who are carrying polythene gunny bags. They took into custody. A.1 and A.2 were carrying Ganja. They were brought to Excise police station and on the report prepared by the Excise Police, he put his signature. As the witness deposed that after the accused were brought to the Excise station, he signed in the mahazarnama, the prosecution cross examined him. He admitted his signature on Ex.P.1. He denied that L.W.7 was also present along with him and acted as mediator. He denied that he is deposing half truth and half false. During cross examination by the learned defence counsel, he deposed that he was the driver of the Jeep bearing No.A.P.27-TV-0025 under hire with Excise Enforcement Squad. He stood as mediator in



the Excise Enforcement Raid cases. He denied that he is a stock mediator. He denied that nothing was happened in his presence and he is deposing false.

12) P.W.4 was the Sub-Inspector of Police, who registered the mediatorsnama, as PR.No.56/2007-08 and he claimed that he forwarded the samples to the chemical examiner.

13) Sri Siva Sankara Rao Borra, learned counsel appearing for the second appellant, would contend that Ex.P.1 suffers with any amount of falsity. It was narrated in Ex.P.1 that passengers at the bus stop were called to act as mediators and from among the passengers, two persons came forward to act as mediators. Now the fact remained is that P.W.3 was not at all a passenger and he was driving the Excise Jeep carrying the Excise Squad. It is admitted by him in cross examination. Though he turned hostile to the case of the prosecution by deposing that he signed in manazarnama in the police station, the prosecution on the same day given up the examination of another mediator viz., Ravoori Narayana Reddy without any reason, for obvious reasons best known to them. On 10.12.2008 the said Ravoori Narayana Reddy deposed in Sessions Case No.27 of 2007 as mediator. The prosecution had a chance to examine him. For obvious reasons, they have given up his

examination. Apart from this, they have stage managed the thumb impressions of the accused on Ex.P.1 as well as Ex.P.1(a) and Ex.P.(b). Both A.1 and A.2 were illiterates and rustic villagers. They were not capable of giving any reply like Ex.P.1(c) and Ex.P.1(d) giving consent for search before Excise officials. As P.W.3 testified that everything was prepared in Excise Station and further the prosecution has given up the examination of another mediator as the contents of Ex.P.1 suffers with falsity, A.2 is entitled for benefit of doubt. He would submit that the appeal is liable to allowed.

14) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that though P.W.3 turned hostile to the case of the prosecution, but he had no necessity to sign mahazarnama, if he really did not witness the events. There is consistency between the evidence of P.W.1, P.W.2 and P.W.5. The samples were of Ganja according to the chemical analyst opinion. Excise police have no reason to falsely implicate A.2 and another. The learned Special Judge rightly found the appellant guilty, as such, appeal is liable to be dismissed.

15) Admittedly, it is a case where there was no personal search of the present appellant. Under the circumstances, compliance of Section 50 of the NDPS Act is not necessary.

However, the veracity or otherwise of the prosecution witnesses is to be tested regarding the genuinity of the case of the prosecution. As seen from Ex.P.1, what is mentioned therein is that when the Prohibition & Excise party called the passengers stood there because the incident was happened at bus stop to act as mediators, from among them, two persons came forward and their names were mentioned in the mahazar as Ravoori Narayana Reddy and Golla Phani Kumar. As evident from the deposition of P.W.3, he was not at all a passenger stood at the bus stop. On the other hand, he was a person, who driven the Jeep of Excise officials at the time of raid. It is quietly evident from the deposition of P.W.3. The contention of the appellant is that P.W.3 and another mediator was stock mediators.

16) As seen from the cross examination part of P.W.1, he deposed that it is true that L.W.7-Ravoori Narayana Reddy today deposed in Excise Sessions Case No.27 of 2007 as a mediator. He does not know whether he already deposed in another Sessions Case No.44 of 2007 on 22.09.2008. The witness accepted the said fact by going through the deposition copies shown to him. Apart from this, there is an admission from P.W.3 that he was a driver of Jeep A.P.27-TV-0025 under hire with Excise Department Squad in patrolling on that day. He stood as mediator in Excise Enforcement Squad raid cases. He

denied that he is a stock mediator to the excise cases in all most all the cases.

17) It is to be noted that by virtue of the above admissions of P.W.3, it is very clear that he used to stand as mediator in Excise Enforcement Squad raid cases. As evident from the admissions made by P.W.1 and P.W.3 in cross examination P.W.3 and L.W.7-Ravoori Narayana Reddy stood as mediators in several excise cases. So, they are nothing but stock mediators.

18) What is disturbing feature in this case is that there is a falsity in Ex.P.1 as rightly contended on behalf of the appellant for the reason that as Ex.P.1 narrates that two among the passengers stood at bus stop came forward as mediators i.e., Ravoori Narayana Reddy and E. Phani Kumar (P.W.3), but the contents of Ex.P.1 that E. Phani Kumar, a passenger proved to be false by virtue of his evidence. Though P.W.3 testified that he signed mahazarnama in the police station, the learned Additional Public Prosecutor as evident from the charge sheet without any reason whatsoever given up the examination of Ravoori Narayana Reddy, another mediator. It is not a case that he was not available for the prosecution to be examined as witness. On the other hand, on 10.12.2008 he deposed in another Sessions Case No.27 of 2007 as a mediator. The

prosecution had knowledge that P.W.3 destroyed the case of the prosecution. If that be the case, it ought to have examined L.W.7-Ravoori Narayana Reddy. Without any reason, he was given up by the prosecution. Under the circumstances, I am of the considered view that it throws any amount of doubt about the bonafidies of the mahazarnama.

19) It is to be noted that in ordinary course when a witness turned hostile either deviating from Section 161 of Cr.P.C. statement or from mahazarnama, Court cannot come to a conclusion that the investigation is false or the contents of mahazarnama are false, but, here is a case that Excise police alleged in Ex.P.1 that mediators were passengers. It proved to be false for the reason that P.W.3 was no other than the driver of Jeep of Excise Squad, who participated in the raid. The very act of the Excise police in showing P.W.3 as a mediator, though it was alleged in Ex.P.1 that mediators were of the passengers, throws any amount of doubt about the bonafidies of the case of the prosecution. The Excise police officials in the raid must blame themselves for these sordid state of affairs. Hence, on account of the fact that Excise police officials got mentioned incorrect facts in Ex.P.1, it is to be held as P.W.3 deviated from mahazar that he signed mediatorsnama in the police station.

When the mahazar was signed in the police station, it goes to the very root of the case.

20) It is to be noted that unless there is a personal search of the accused in view of Section 50 of the NDPS Act, there is no need or necessity to comply Section 50 of the Act by requisitioning services by Gazetted Officer or by taking the accused to the Gazetted Officer. Here the Excise police claimed to have complied even Section 50 of the Act. The Gazetted Officer as contemplated under Section 50 of the Act should be independent one unconcerned with the investigation. The very claim of P.W.1 that he introduced himself as a Gazetted Officer before accused and gave option to be searched before another Gazetted Officer for which A.1 and A.2 gave their consent to be searched before him is not at all bonafide. Coupled with the falsity as mentioned in Ex.P.1, this act of P.W.1 that he can as well act as a Gazetted Officer is nothing but violating Section 50 of the Act. This type of attitude on the part of P.W.1 is to be viewed with an eye of suspicion.

21) Having regard to the above, I am of the considered view that the very case of the prosecution as projected in Ex.P.1 is highly suspicious. The learned Special Judge did not notice the fact that according to Ex.P.1, P.W.3 was cited as a passenger who stood among the persons at the bus stop which proved to

be false. Having regard to the overall facts and circumstances, I am of the considered view that the learned Special Judge did not notice to the fact that even Ravoori Narayana Reddy was a stock mediator who was given up by the prosecution without furnishing any reason though P.W.3 turned hostile. The evidence on record warrants the Court to extend the benefit of doubt against the accused. The evidence on record is not at all convincing so as to sustain a conviction against the accused. In my considered view, the learned Special Judge on an erroneous appreciation of the evidence recorded an order of conviction which is liable to be interfered with.

22) In the result, the Criminal Appeal is allowed, setting aside the judgment in Sessions Case No.42 of 2007, dated 19.01.2009, on the file of Special Judge for NDPS Cases-cum-I Additional District & Sessions Judge, Ongole, insofar as second appellant/A.2 is concerned, thereby she shall stand acquitted of the charge under Section 20(b)(ii)(B) r/w 8(c) of the Narcotic Drugs and Psychotropic Substance Act, 1985. The fine amount, if any, paid by her shall be refunded to her after appeal time is over.

23) Registry is directed to forward a copy of this judgment along with record to the Court below on or before 25.12.2023.

Consequently, miscellaneous applications pending, if any, shall stand closed.

**JUSTICE A.V. RAVINDRA BABU**

Dt. 18.12.2023.

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PGR



**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU**

**CRL. APPEAL NO.56 OF 2009**

**Note:**

Registry is directed to send copy of the judgment along with original records to the Court below on or before 25.12.2023.

**L.R. copy be marked.**

**Date: 18.12.2023**

PGR