

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.557 OF 2000**

The State of Maharashtra ... Appellant.

V/s.

Shivaji Shankar Bhintade
Aged 64 years,
Resident of Bavdhan
Taluka Wai, District Satara ... Respondent.

Mr.V.B.Konde-Deshmukh for the Appellant.
Mr.Siddhsen S. Borulkar i/b Mr.S.R.Borulkar for the Respondent.

**CORAM : S.S.SHINDE &
V.G. BISHT, JJ.**

**DATE OF RESERVE : 20TH FEBRUARY, 2020
DATE OF PRONOUNCEMENT : 20TH MARCH, 2020**

JUDGMENT (PER V.G. BISHT, J.) :

1. This Criminal Appeal has been preferred by the Appellant-State aggrieved by the judgment and order dated 17th May, 2000 passed by learned Sessions Judge, Satara in Sessions Case No.48 of 1998 whereunder respondent-accused was acquitted of the offence punishable under section 8 (b) read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act").

2. The brief facts of the case are : Shri Shivaji Gangaram Rasal (P.W.3), Informant at the relevant time was attached to State Excise Office, Wai, when he received information that some of the agriculturist have cultivated opium-poppy plants in their fields at village Bavdhan. He also gave information to the Superintendent, State Excise, Satara and then on 25/02/1997 he along with panch witnesses and other staff members raided the field of respondent-accused bearing Gat No.3432 and found opium-poppy plants in his field. Out of those plants, two plants were uprooted and treated as sample plants and were duly sealed on the spot, remaining opium poppy plants were also seized separately on the spot and detail seizure panchnama was prepared with the help of panch witnesses.

3. P.W.3 Informant later on lodged report on the basis of which C.R.No.9/1997, under section 8 (b) read with section 18 of the NDPS Act came to be registered against accused and after necessary investigation accused was charge-sheeted. The accused abjured his guilt and put forth the case of false implication.

4. Heard Mr.Konde-Deshmukh, learned APP for the Appellant-State and Mr.Borulkar, learned counsel for the Respondent-Accused in the present case.

5. It appears from the record that in order to bring home the guilt, the prosecution examined only four witnesses. We propose to go through their evidence.

6. P.W.3 Informant stated in his evidence (Exhibit-16) that in the month of February 1997, he was working with the State Excise Office, Wai. On 25/02/1997, he called two panch witnesses at the Office of Superintendent, State Excise, Satara and told them that opium-poppy plants are grown in different areas of village Bavdhan and also gave them idea about the raid. Accordingly, the Superintendent of State Excise Office and panch witnesses visited village Bavdhan. According to him in the field which is known as "Gavandhar" area he noticed opium-poppy plants. They then uprooted two plants out of those plants and collected soil from different places from the field in two separate plastic packets. He also called Police Patil and Sarpanch on the

spot and asked as to whom that field belongs. Talathi told that he will tell about it after seeing 7 X 12 extract. There were about 1528 plants and weight of all plants was 115.500 kgs. He accordingly prepared seizure panchnama (Exhibit-11) on the spot and took muddemal in his custody.

7. He lastly stated that seized muddemal was kept by him in his office. He then proved the complaint at Exhibit-17. It appears that this witness also investigated the case after lodging the complaint, collected 7 X 12 extract (Exhibit-18) and recorded statements of the witnesses.

8. From the contents of FIR, we notice that the informant was given information about illegal cultivation of opium-popy plants at village Bavdhan by some agriculturist. However, the evidence of P.W.3 Informant suggests that on 25/02/1997 he summoned two panch witnesses in the office of Superintendent, State Excise, Satara and gave them idea of proposed raid in respect of opium-popy plants being grown in different areas of village Bavdhan. If this piece of evidence is read carefully then this would definitely mean that he was having personal knowledge of cultivation of opium-popy

plants in different parts of village Bavdhan. However, it is not so. As is pointed out by us, the source of information was somewhere else and having come to know from that source, which is apparent from the FIR, the Informant went to the Superintendent, State Excise and informed him accordingly.

9. The alleged information in respect of growing of opium-poppy plants in village Bavdhan by some agriculturist admittedly was not reduced into writing by the concerned. P.W.3 Informant has stated in his cross examination that he had reduced in writing the information so received by him but the same is not produced in the Court. When the information was reduced into writing, according to this witness, then why the said information was not filed along with the charge-sheet by the Informant - Investigating Officer is beyond our comprehension. Even, he does not throw light as to procedure and means applied by him while recording the said information and its importance. Therefore, there is no occasion for us to verify the correctness or otherwise of said information and as also about its source. Since all along it has been theory of the prosecution that pursuant to information the raid was carried out then it was all the more

obligatory and essential on the part of concerned officer to have reduced said information into writing and his subjective satisfaction about the necessary raid. This is major lacuna which necessarily gives set-back to the theory of the prosecution.

10. The only other witness examined by the prosecution in order to lend support to the version of P.W.3 Informant is P.W.1 Pradeep Haribhau Bhadalkar, panch witness. This being only witness, his testimony assumes significance.

11. P.W.1 stated in his evidence (Exhibit-10) that on 25/02/1997 he accompanied the other panch Siddhayya to the Excise Office at Satara. The officers of the State Excise were present. They were told that they wanted to go to area of Bavdhan where cultivation of opium-poppy plants is done. Accordingly, they went there and noticed that there were total 1580 plants. Sub-Inspector Shivaji Rasal (P.W.3) told that they were opium-poppy plants. Two plants were uprooted. All plants were sealed in his presence under panchnama at Exhibit-11. Sub-Inspector Shivaji Rasal (P.W.3) then asked the

Talathi as to whom that field belongs, to which the latter replied that he will have to see about it. The cross examination of this witness has a lot to offer.

12. P.W.1 stated in his cross examination that he is deposing for the fourth time in respect of similar raid and has acted as panch witness in total seven cases. He further stated that he is acquainted with Sub-Inspector Shivaji Rasal (P.W.3). He then stated that in his presence the information not was reduced into writing. According to him, he cannot tell even by approximation as to what crops were grown in that field, where the raid was carried out.

13. It doesn't take much prescience to understand that this witness is a habitual panch witness, the reason being his acquaintance with the informant. What hits his testimony is his inability to tell about crops standing at the time of alleged raid. Not only the FIR but contents of panchnama (Exhibit-11) clearly depicts the nature of crops grown at the relevant time. In such circumstances, it was desirable from the mouth of this witness to depose about the standing crops at the relevant time. There is one more reason.

14. His examination-in-chief shows that there were total 1580 opium-poppy plants in the field where the raid was carried out whereas the panchnama shows and as also the case of prosecution is that there were 1558 opium-poppy plants. So on this count also his testimony needs to be questioned.

15. There is no dispute to the fact that agricultural land in question bearing Gat No.3432 at the relevant time belonged to accused which is quite apparent from 7 X 12 extract (Exhibit-18) filed on record. Assuming for the sake of argument that opium-poppy plants were discovered in the field of accused. However, not only from the FIR but as also from evidence of P.W.1 panch witness and P.W.3 Informant it is discernible that at the relevant time the accused was not found in his field. There is reason for that and we find that reason in the cross examination of P.W.3 Informant.

16. In the cross examination, P.W.3 Informant stated that he learnt that the field owner was in service at Bombay. The accused was called by giving message through his

relatives. Thus, there remains no manner of doubt that during the investigation, we say so because the informant had also acted as the Investigating Officer, he gathered that the accused was at Bombay in connection with his service. It is also not the case that during the course of investigation, it transpired that the accused used to cultivate the field in question through servant or through his relatives. This witness could have ascertained that fact by recording the statements of adjoining land holders. Surprisingly, his cross examination shows that he did not record the statements of adjoining land holders. In this obtaining situation, merely because the accused was owner of the field in question, it cannot be said, in the light of evidence of informant, that the field was exclusively or consciously controlled by him. In order to prove the guilt, the prosecution must have proved that the accused had cultivated prohibited plants, namely, opium-poppy plants at the time of raid. No proof is forth coming from the prosecution to establish that the accused was in exclusive possession of field or he had actually cultivated opium-poppy plants although it was found in the field in question.

17. Before parting with the judgment, we are constrained to note the absence of positive evidence showing that seized opium poppy plants were safely deposited with the concerned in a sealed condition and after taking proper entry in the register meant for the purpose. It is also not evidence of P.W.3 Informant that he himself was In-charge of the said register and, therefore, he was entitled to keep custody of the contraband after he returned to office.

18. It is evident from the evidence of P.W.2 (Exhibit-12) Ramchand Kisan Suryavanshi that muddemal was carried to the office of Chemical Analyser on 01/03/1997. It is quite clear that the said muddemal was lying with P.W.3 for about five days. Needless to say, there is no evidence of safe custody of the seized muddemal. In other words, it cannot be said that the prosecution has ruled out possibility of the sample parcels having not been tampered with by anybody till it reached the hands of Chemical Analyser. This circumstance makes the case of the prosecution a suspect. Thus, seen from any angle, there is nothing but total failure on the part of prosecution.

19. In the aforesaid premise, we conclude that the learned trial Court has properly taken into consideration all material aspects of the case. The prosecution has not been able to make out good grounds for interference at the hands of this Court. The impugned order being in accordance with law and further it being neither perverse nor illegal, the appeal is liable to be dismissed. Hence, appeal is dismissed accordingly. Bail bond, if any, shall stand canceled.

(V.G. BISHT, J.)



(S.S. SHINDE, J.)