

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF SEPTEMBER, 2020

R

BEFORE

**THE HON'BLE MR.JUSTICE B.A. PATIL**

**CRIMINAL PETITION NO.9319/2016**

**BETWEEN:**

ABDUL ALEEM,  
S/O FAYAZ,  
AGED ABOUT 23 YEARS,  
RESIDENT OF NO.24,  
2<sup>ND</sup> FLOOR, 3<sup>RD</sup> CROSS,  
GUPTA LAY-OUT, LAKKASANDRA,  
BENGALURU -- 560 037.

... PETITIONER

(BY SRI. HASHMATH PASHA, SR. COUNSEL FOR  
M/S.HASHMATH PASHA & ASSOCIATES, ADVOCATES)

**AND:**

THE INTELLIGENCE OFFICER,  
NARCOTIC CONTROL BUREAU,  
BANGALORE ZONAL UNIT,  
OFFICE AT H.NO.7/1-2,  
PRIYANKA VILLA, RAMANNA GARDEN,  
KATTIGENAHALLI,  
BAGALUR MAIN ROAD,  
AIR FORCE STATION,  
YALAHANKA POST,  
BENGALURU - 560 063.

(REPRESENTED BY LEARNED  
SPECIAL PUBLIC PROSECUTOR  
MR.K.N.MOHAN)

... RESPONDENT

(BY SRI. H.MALLAN GOUD, SPL. PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE PROCEEDINGS PENDING IN NCB-F.NO.48/1/5/2013/BZU ON THE FILE OF THE NARCOTIC CONTROL BUREAU, BANGALORE ZONAL UNIT, BANGALORE WHICH IS PENDING IN SPL. CASE NO.52/2014 ON THE FILE OF THE XXXIII ADDL. CITY CIVIL AND S.J. AND SPL. JUDGE FOR NDPS CASES (CCH-33), BANGALORE CITY AS AN ABUSE OF PROCESS OF LAW.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION 'THROUGH VIDEO CONFERENCE' THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The present petition has been filed by the petitioner/accused No.1 under Section 482 of Cr.P.C. praying this Court to quash the proceedings pending in NCB F.No.48/1/5/2013/BZU on the file of the Narcotic Control Bureau, Bangalore Zonal Unit, Bengaluru pending in Spl.case No.52/2014 on the file of XXXIII Additional City Civil & Sessions Judge for N.D.P.S. cases (CCH-33) for the offence punishable under Section 8(c) r/w Sections 20(b), 28, 29 & 32B(d) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act').

2. I have heard Sri. Hashmath Pasha, learned senior counsel for the petitioner/accused No.1 and Sri. H. Mallan Goud, learned SPP for the respondent-State virtually.

3. Before taking up the case on hand, it is just necessary to place on record certain aspects of the case. Earlier, the Co-ordinate Bench of this Court heard this matter and vide order dated 14.12.2016 allowed the petition and proceedings initiated in special case No.52/2014 have been quashed. Subsequently, an application came to be filed by the respondent to recall the order dated 14.12.2016. This Court, after considering the submissions made by the learned counsel appearing for the parties vide order dated 22.08.2017 allowed IA.Nos. 1 and 2/2017 and the order dated 14.12.2016 is recalled. As such, again I have heard learned senior counsel appearing for the petitioner/accused No.1 and learned SPP for the respondent and proceed to pass the present order.

4. The brief facts of the case alleged in the complaint are that the Intelligence Officers of NCB received a credible information on 27.08.2013 that the petitioner/accused No.1 was carrying *ganja* or *cannabis* and at about 8.30 p.m. he was travelling in a black color Santro car bearing registration No.KA 51-M-8359. The said vehicle has been intercepted by the officials of NCB and hence, search has been conducted on the person by giving him a notice under Section 50 of NDPS Act. They did not find anything from the possession of the person and after search of the car they found a white colored bag containing dried leaves dark brown in color and the same is claimed to be *ganja*, which was seized by drawing a mahazar. The said *ganja* was weighing about 15.552kgs and after investigation, the charge sheet has been filed.

5. It is the submission of the learned Senior Counsel that the panchnama which has been produced

clearly goes to show that the articles seized from the car contained dried leaves dark brown in color and the same is not the *ganja* as defined in the NDPS Act. It is his further submission that the Superintendent was examined as PW2 and during the course of cross-examination of the said witness, he has clearly admitted that he has not gone personally to the spot and on perusal of the seized articles, it was containing the dried leaves of *ganja*. It is his further submission that in order to constitute *ganja* or *cannabis* as defined under Section 2(iii)(b) of the NDPS Act, the said thing must contain flowering or fruiting tops of the *cannabis* plant (excluding the seeds and leaves when not accompanied by the tops). It is his further submission that when the seized article is not considered to be a *ganja* and if it is only leaves, then no offence has been committed by the petitioner/accused No.1 under the NDPS Act. It is his further submission that the said material has been sent for the chemical examination and even the said report

indicates that it is containing dried greenish brown plants parts like leaves, seeds, flowers, fruits and etc., kept inside the plastic pouch and he has also given the opinion that it is *ganja (cannabis)*. But however, the said material has not been analyzed and it has not been specifically stated that to what extent the said ingredients were containing tetrahydrocannabinol.

6. It is his further submission that the chemical examiner has to specifically say what is the content of tetrahydrocannabinol found in the said article. It is his further submission that to call it as a *ganja*, the tetrahydrocannabinol must contain the said ingredients of 25% and in the absence of the said report, it cannot be held as a *ganja*. It is his further submission that the said *ganja* that has been seized must contain the actual material. In the absence of any such material, the proceedings initiated and continuation of the proceedings is only an empty formality and no useful purpose is going to be served. It

is his further submission that even if the said content contains *ganja*, the proper weighing of the said material is also very much necessary in order to determine whether, it is small quantity, intermediate, or commercial quantity. To assess this, proper weighment has to be done to the said contents. In order to substantiate his said arguments, he has relied upon the decision of the Co-ordinate Bench of this Court in the case of **K.K.REJJI AND OTHERS V/S STATE BY MURDESHWAR POLICE STATION, KARWAR** reported in **2009 SCC ONLINE KAR 325** and another decision in the case of **MUJEEB MEHBOOB V/S. STATE OF KARNATAKA** reported in **(2013) 2 KARLJ 171**. On these grounds, he prayed to allow the petition and to quash the proceedings.

7. *Per contra*, learned SPP on behalf of the respondent vehemently argued and submitted that already charge sheet has been filed after full investigation and some of the witnesses have been

examined before the court, the remaining witnesses have to be examined to substantiate the case of the prosecution. It is his further submission that when earlier order was passed, the FSL Report was suppressed and by taking into consideration the said aspect, the said order has been recalled and now they have produced the FSL report, which clearly indicates the fact that the seized article is *ganja* and a report has also been produced from the competent Authorities. It is his further submission that it is not viable to exercise the power under Section 482 of Cr.P.C. at this juncture to quash the proceedings.

8. It is his further submission that if the remaining witnesses are to be examined, the fact is going to be proved by the respondent and if at this juncture, the power if it is exercised, it is nothing but illegal exercise of power to quash the proceedings. On these grounds, he prayed to dismiss the petition.



9. I have carefully and cautiously gone through the submissions made by learned counsel appearing for the parties and perused the records.

10. It is not in dispute that the respondent/NCB on 27.08.2013, on receiving a credible information, intercepted the car bearing registration No.KA-51/M-8359 and when the same has been searched in the car it was containing a dried leaves dark brown in color and the same was seized and it was weighing about 15.552 kgs. It is a specific contention of the learned senior counsel for the petitioner/accused No.1 that the seized article is only a dried leaves and it does not come within the definition of the “cannabis” or “ganja” as contemplated under Section 2(iii)(b) of the NDPS Act. For the purpose of brevity, I quote Section 2 (iii)(b) of the NDPS Act which reads as under:

*“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by*

*the tops), by whatever name they may be known or designated.”*

On going through the said definition, it makes it very clear that *ganja* means only the flowering or fruiting (excluding the seeds and leaves when not accompanied by the tops).

11. It has been clearly mentioned in the complaint itself that when a car was intercepted and a search was made, a white color cover containing dried leaves dark brown in color and with peculiar smell was found behind the back seat and the same was seized. Though, it is contended by the learned counsel for the respondent that the FSL report which has been produced indicates that the said articles contains dried greenish brown plant parts like leaves, seeds flowers, accompanied by the tops etc., and he has also opined that it is *cannabis (ganja)* but when the contents of the complaint is looked into that itself says that it is only dried leaves dark brown in color. Be that as it may.

Subsequently, PW2 was called to be examined before the Court and during the course of cross-examination of the Superintendent of the respondent/NCB, he has clearly admitted that the said article is only dried leaves and material which has been seized is considered to be dried leaves. Then under such circumstances, the FSL report which has been produced is not acceptable. There is material contradictions to the contents of complaint, evidence of PW-2 and FSL report. If really, the seized article was containing the article which has been mentioned in the FSL report like the greenish brown plant part like leaves, seeds, flowers tops etc., under such circumstances, definitely, the same could have been mentioned in the contents of the complaint and evidence of PW-2.

12. As could be seen from the contents of panchanama drawn at the spot it only says that it was containing dried leaves dark brown color. Be that as it may. If the FSL report is accepted, there is no definite

weight of actual flowering or fruiting parts of the plant. A specific weighing of separate quantity of flowering or fruiting parts, separately, is also necessary so as to come to the conclusion that whether it is a small quantity or an intermediate quantity or commercial quantity. That particular fact is also absent in the records. Even as held in the decision in the case of **K.K.Rejji and others**, quoted *supra* at para Nos.13 and 14, it has been observed as under:

*“13. From the extracted portion it is seen what the officers have seized are cannabis plants. The description of seized product shows it had stems, leaves, branches and perhaps even the fruiting parts. But the question is can the stem, leaves, branches be termed as ‘Ganja’ in view of definition referred to above. The answer is obviously in the negative, because the Act itself defines what is Ganja. Not only the raiding party but the Investigation Officer has not separated fruiting tops or flowering from the Ganja plants before weighing. What has been done is they have weighed the entire plants to*

*record the weight as 10 kgs. Since the leaves, stem and branches were also part of the weight, (mass) there was no definite weight of actual flowering or fruiting part of the plant (defined as Ganja). Hence the evidence produced before the prosecution to sustain the charge is totally vague. If the whole plant is seized, then it will only be a cannabis plant and not ganja.*

*14. Initially, the charge against the appellant/accused was for the offence punishable under Section 20(a), (b) of NDPS Act, but the Trial Court found them guilty only for the offence punishable under Section 20(b)(i) of the Act. There is no conviction for the offence under Section 20(a) of the Act. Hence, it was incumbent upon the prosecution to establish it was Ganja as defined and its weight.”*

By taking into consideration the ratio laid down in the said decision that whatever the article which has been seized, it appears to be only dried leaves and it will not fit within the definition of the ‘Ganja’ as defined under Section 2(iii)(b) of the NDPS Act. Even, the FSL report

does not specifically mention what is the quantity of tetrahydrocannabinol found in the said articles. As could be seen from the said report, the only opinion which has been expressed is that the quantity estimated of the sample under the reference could not be done for the want of facility. On that count, it may not be held that it was the *ganja* which is prohibited under the said NDPS Act. For the purpose of the said facts that on relying upon the decision of Mujeeb Mehboob (*supra*) quoted at para Nos.7, 8, 10 and 11, it is observed as under:

*“7-The definition of ‘cannabis’ in Section 2(iii) of the NDPS Act is as under:*

*(iii) “Cannabis (hemp)” means—*

*(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;*

*(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by*

the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.

7A. It is therefore clear from the aforesaid definition that, it is only flowering or fruiting tops of cannabis plant excluding the seeds and leaves that constitute ganja. This Court in the decision referred to by the petitioner's Counsel in K.K.Reji's case has also held that, it is only the fruiting or flowering part of cannabis plants that will constitute ganja.

8. In the case on hand, the FSL report that is produced by the petitioner does not give clear indication as to what was seized was the flowering or fruiting part of cannabis plant and if the samples seized are to be termed as charas, then that would also require the prosecution to indicate as to the percentage of resin that is obtained from the cannabis plant. The FSL report does not give any indication in regard to this aspect also.

10. In the case on hand, the alleged seizure from the petitioner is said to be 1 kg 195 gms and it certainly falls below the commercial

quantity. In the decision referred to by the petitioner's Counsel viz., Bajinder Singh's case, the Division Bench of the said High Court has held that, as per the definition u/s 2(iii)(a) of the NDPS Act, it is the separated resin alone which constitute charas and as far as the percentage is concerned, insofar as ganja is concerned, it has been held in the said case that tetrahydrocannabinol are found not only in charas, but also in ganja and the extent of the said ingredient has to be 25% in ganja and 25 to 41% in charas.

11. In the instant case, the material placed at this juncture through FSL report throws no light as to the percentage of aforesaid ingredient in the quantity seized and there is still doubt as to what was seized was actually charas or ganja. Having regard to the aforesaid factors, in the instant case on hand, the petitioner can be released on bail by imposing conditions to safeguard the prosecution interest. Hence, the following order is passed:

1. The petitioner shall be released on bail on his furnishing personal bond for



*Rs.50,000/- with two sureties for the likesum to the satisfaction of the Trial Court.*

*2. He shall not tamper with the evidence and shall not give threat to the witnesses in any manner.*

*3. He shall not hamper the investigation.*

*4. He shall attend the Court on all dates of hearing.*

*5. He shall mark his attendance before the concerned police Station on the 15<sup>th</sup> and 30<sup>th</sup> of every month between 10.00 a.m. and 5.00 p.m.*

*6. He shall not involve himself in the offence of like nature in future.*

*7. He shall appear before the Trial Court regularly on all dates of hearing.*

*Violation of any one of the above conditions will give rise to cancellation of bail at the instance of the prosecution.”*

13. When the entire material is analyzed and if the said quantity of the article which has been seized is not considered to be *Ganja* within the definition then under such circumstances, I am of the considered

opinion that the continuation of the proceedings before the Court below is nothing but it is abuse of process of law. Though it is contended by the learned counsel for the respondent that the prosecution has to examine many more witnesses to substantiate its case but the documents produced itself clearly points out the seized article is only dried leaves brown in color then under such circumstances, any quantity of the evidence which is going to be produced orally is not going to help the case of the prosecution in any manner, it is nothing but waste of the valuable judicial time.

14. I am conscious of the fact that now a days case of high profile drug peddling are increasing and such circulation is also increasing. I am also conscious of the fact that it has got a serious effect in the society particularly, harming younger generation, the college going children, it promotes crimes, easy money and it affects the life of youngsters who are the future of this country, they will be much affected. The said menace

has to be removed from root level like “Chanakya” who removed the grass by taking it as a challenge. Now it is high time for investigating agency to take proper steps and become “Chanakya” to nip from the bed from grass root level. There is a trend of inculcation of drugs, ganja and other such things in the society by various transactions and it has created menace in the society and such things are to be dealt with iron hands and they could not be spared even for a while. However, in the absence of any legal material, this Court will be helpless only to pass the present order.

15. In that light, on perusal of the material produced it indicates that the said seized articles do not fit within the definition of the NDPS Act. Under such circumstances, the same has to be quashed.

16. Accordingly, the petition is **allowed** and the proceedings initiated in Spl.case No.52/2014 on the file of XXXIII Additional City Civil & Sessions Judge and

Special Judge for NBPC CCH 33 for the offence punishable under Section 8(c) r/w 20(B)28, 29 32(B)(d) **are quashed.**

As main petition itself is disposed off, I.A.No.1/2016 does not survive for consideration.

**Sd/-  
JUDGE**

DS