IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11138 OF 2024

BETWEEN:

CHANDRASHEKAR
S/O JANARDHAN
AGED ABOUT 67 YEARS
RESIDING AT NO.24, 5TH CROSS
K.R.ROAD, JAYANAGAR
7TH BLOCK
BENGALURU – 560 070.

... PETITIONER

(BY SRI JAYSHAM JAYASIMHA RAO, ADV.)

AND:

STATE OF KARNATAKA
BY BANASHANKARI PS
BENGALURU
REPRESENTED BY SPP
HIGH COURT BUILDING
AMBEDKAR VEEDHI
BENGALURU – 560 001.

... RESPONDENT

(BY SRI B N JAGADEESH, ADDL. SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR BEARING CRIME NO. 250/2023 DATED 01/09/2023 REGISTERED BY THE RESPONDENT -

BANASHANKARI POLICE, BENGALURU AGAINST THE PETITIONER FOR ALLEGED OFFENCE PUNISHABLE UNDER SECTION 20(A) OF THE NDPS ACT, 1985 AT ANN-A AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question proceedings in Spl.C.C.No.665 of 2024 registered for offences punishable under Sections 20(a) and 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('Act' for short).

2. Heard Sri Jaysham Jayashimha Rao, learned counsel appearing for petitioner and Sri B N Jagadeesh, learned Additional State Public Prosecutor appearing for the respondent.

3. Facts in brief germane are as follows:

It is the case of the prosecution that on an alleged tip off they conduct a search in the house of the petitioner, a senior citizen on

01-09-2023 at about 4.30 p.m. on an allegation that the petitioner is cultivating 5 to 6 cannabis plants in his property. The search and seizure leads to registration of a crime initially for offence punishable under Section 20(a) of the 'Act'. The police then conduct investigation and file a charge sheet against the petitioner. The concerned Court, in terms of its order dated 19-03-2024, takes cognizance of the offences under Sections 20(a) and 20(b)(ii)(c) of the Act and registers Spl.C.C.No.665 of 2024 and issues summons to the petitioner. Taking of cognizance and issuance of summons is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel Sri Jaysham Jayashimha Rao appearing for the petitioner would vehemently contend that offence of cultivation would mean an intentional raising of plants. Cultivation is not defined under the Act. The police seize 5 cannabis plants amongst other general weed that was grown in the backyard of the property belonging to the petitioner. There is no allegation that he has intentionally raised those plants. At best, it could be cross pollination, is the submission of the learned counsel. He would further contend that there is no evidence placed on record

which would depict cultivation of the cannabis plant. While weighing the plants that were taken, they are not segregated to what would become cannabis and 5 plants, all together with roots, stems, leaves and buds are weighed at 27.360 kgs, which according to him, is completely contrary to law.

5. Per-contra, learned Additional State Public Prosecutor would vehemently refute the submission to contend that the police have seized plants and the amount of cannabis involved in the seizure is a matter of trial. Charge sheet has been filed, *prima facie,* the petitioner is guilty of cultivation. Therefore, the afore-quoted offences. He would submit that this Court should not quash the proceedings on the plea of the petitioner.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated dates, link in the chain of events is a matter of record. The petitioner, a hexagenerian, is hauled into

these proceedings for a seemingly unknown growth of cannabis plants in his backyard. The alleged tip off led to search and the search led to seizure or uprooting of the alleged cannabis plants 6 in number weighting 27.360 kgs. The police after investigation file a charge sheet. The summary of the charge sheet as obtaining in column No.17 reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ದಿನಾಂಕ:–01–09–2023 ರಂದು ಸಾಕ್ಷಿ–01 ರವರು 16:30 ಗಂಟೆಗೆ ಠಾಣೆಯಲ್ಲಿರುವಾಗ್ಗೆ, ಬನಶಂಕರಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದು ಜಯನಗರ 7ನೇ ಬ್ಲಾಕ್, ಕೆ.ಆರ್.ರಸ್ತೆ, 5ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮನೆ ನಂ.24ರ ಹಿಂಭಾಗದ ಖಾಲಿ ಸ್ಥಳದಲ್ಲಿ ಸದರಿ ಮನೆಯ ಮಾಲೀಕನಾದ ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕ್ರ.ಸಂ.–12 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿಯು ಸುಮಾರು 5–6 ಮಾದಕ ವಸ್ತವಾದ ಗಾಂಜಾಗಿಡಗಳನ್ನು ಅಕ್ರಮವಾಗಿ ಬೆಳೆಸಿರುತ್ತಾನೆಂಬ ಭಾತ್ಮೀದಾರರಿಂದ ಬಂದ ಮಾಹಿತಿ ಮೇರೆಗೆ ಸಾಕ್ಷಿ–01 ರವರು ಸ್ವಯಂ ಪ್ರಕರಣ ದಾಖಲಿಸಿಕೊಂಡು ಸಿಬ್ಬಂದಿಗಳಾದ ಸಾಕ್ಷಿ–04 ರಿಂದ ಸಾಕ್ಷಿ–08 ಹಾಗೂ ಪಂಚಾಯ್ತಿದಾರರಾದ ಸಾಕ್ಷಿ–02 & 03 ರವರೊಂದಿಗೆ ಮಾಹಿತಿ ಬಂದ ಸ್ಥಳಕ್ಕೆ ಹೋದಾಗ ಆರೋಪಿ ಉಪಸ್ಥಿತಿಯಲ್ಲಿದ್ದು, ಆಗ ಸಾಕ್ಷಿ–01 ರವರು ಆರೋಪಿಗೆ "ನಮಗೆ ನೀವು ವಾಸವಿರುವ ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ 24 ರಲ್ಲಿನ ಮನೆ ಹಿಂಭಾಗದ ಖಾಲಿ ಸ್ಥಳದಲ್ಲಿ ಅಕ್ರಮವಾಗಿ ಮಾದಕ ವಸ್ತು ಗಾಂಜಾ ಗಿಡಗಳನ್ನು ಬೆಳೆದಿರುವುದಾಗಿ ಮಾಹಿತಿ ಬಂದಿದ್ದು ಈ ಬಗ್ಗೆ ಪರಿಶೀಲನೆ ಮಾಡಬಹುದೆ ಎಂದು ಪ್ರಶ್ನಿಸಿಲಾಗಿ ಆರೊಪಿಯು ಒಪ್ಪಿಕೊಂಡು ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಲು ಅನುವು ಮಾಡಿಕೊಟ್ಟ ಮೇರೆಗೆ ಸಾಕ್ಷಿ–01 ರವರು ಸಾಕ್ಷಿ–02 ರಿಂದ ಸಾಕ್ಷಿ–08 ರವರುಗಳೊಂದಿಗೆ ಹೋಗಿ ಪರಿಶೀಲಿಸಲಾಗಿ ಸ್ಥಳಸಲ್ಲಿ, 05 ಮಾದಕ ವಸ್ತು ಗಾಂಜಾ ಗಿಡಗಳನ್ನು ಬೆಳೆಸಿರುವ ಬಗ್ಗೆ ಮಾಹಿತಿ ಖಚಿತಪಟ್ಟಿದ್ದು ಆಗ ಸಾಕ್ಷಿ–01 ರವರು ಸದರಿ ವಿಚಾರವನ್ನು ಸಾಕ್ಷಿ–12 ರವರಿಗೆ ಮಾಹಿತಿ ತಿಳಿಸಿ ಸದರಿಯವರಿಂದ ಮಾದಕ ವಸ್ತು ಗಾಂಜಾ ಗಿಡಗಳನ್ನು ಬುಡ ಸಮೇತ ಕಿತ್ತು/ಕತ್ತರಿಸಿ ಜಪ್ತಿಪಡಿಸುವ ಬಗ್ಗೆ, ಮೌಖಿಕ ಆದೇಶವನ್ನು ಪಡೆದುಕೊಂಡು ಆರೋಪಿಗೆ ಕಲಂ 50 ಎನ್.ಡಿ.ಪಿ.ಎಸ್ ಕಾಯ್ದೆ ರೀತ್ಯಾ ನೋಟೀಸ್ ಜಾರಿ ಮಾಡಿ ಸಾಕ್ಷಿ–01 ರವರು ಸಾಕ್ಷಿ–12 ರವರ ಮೌಖಿಕ ಆದೇಶದಂತೆ ಸದರಿ ಮಾದಕ ವಸ್ತು ಗಾಂಜಾ ಗಿಡಗಳನ್ನು ಒಂದೊಂದಾಗಿ ಬುಡ ಸಮೇತ ಕಿತ್ತು /ಕತ್ತರಿಸಿ ಒಟ್ಟಿಗೆ ಮಾಡಿ ಒಂದು ಪ್ಲಾಸ್ಟಿಕ್ ಚೀಲಕ್ಕೆ ಹಾಕಿ ತೂಕ ಮಾಡಲಾಗಿ ಒಟ್ಟು 27 ಕೆ.ಜಿ.360 ಗ್ರಾಂ (ಬೇರು, ಕಾಂಡ, ಎಲ್ ಹಾಗು ಮೊಗ್ಗುಗಳುಳ್ಳ ಹಸಿ ಗಾಂಜಾ) ಇದ್ದು ಸದರಿ ಗಾಂಜಾವನ್ನು ಅಮಾನತ್ತುಪಡಿಸಿಕೊಂಡು, ಅಮಾನತ್ತುಪಡಿಸಿಕೊಂಡ ಗಾಂಜಾ ಹಾಗೂ ದಾಳಿ ಪಂಚನಾಮೆಯ ಸಮಯದಲ್ಲಿ ತೆಗೆದ ಭಾವಚಿತ್ರಗಳು ಮತ್ತು ವಿಡಿಯೋಗಳುಳ್ಳ ಒಂದು ಡಿವಿಡಿ ಈ ವಸ್ತುಗಳನ್ನು ಠಾಣಾ ಪಿ.ಎಫ್.ನಂ.123/2023 ರಲ್ಲಿ ನಮೂದು ಮಾಡಲಾಗಿರುತ್ತದೆ.

ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕ್ರ.ಸಂ.–12 ರಲ್ಲಿ ನಮೂದಿಸಿದರುವ ಆರೋಪಿಯು ಜಯನಗರ 7ನೇ ಬ್ಲಾಕ್, ಕೆ.ಆರ್.ರಸ್ತೆ, 5ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮನೆ ನಂ.24 ರ ತನ್ನ ವಾಸದ ಮನೆಯ ಹಿಂಬಾಗದ ಖಾಲಿ ಸ್ಥಳದಲ್ಲಿ ಮಾದಕ ವಸ್ತುವಾದ ಗಾಂಜಾವನ್ನು ಅಕ್ರಮವಾಗಿ ಹಣ ಸಂಪಾದನೆ ಮಾಡುವ ಸಲುವಾಗಿ ಬೆಳೆಸಿದ್ದುದು ತನಿಖೆಯಿಂದ ದೃಡಪಟ್ಟಿರುತ್ತದೆ, ಆದ್ದರಿಂದ ಆರೋಪಿ ವಿರುದ್ದ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ."

What was the seizure is also found in the P.F. and it reads as follows:

"ಕ್ರಮ. ಸಂಖ್ಯೆ.	ಸ್ವತ್ತಿನ ವಿವರಗಳು	ಅಂದಾಜು ಬೆಲೆ ಮತ್ತು ಮಾಲು	ಯಾರಿಂದ ಮತ್ತು ಎಲ್ಲಿ ವಶಪಡಿಸಿಕೊಳ್ಳಲಾಯಿತು	ವಿಲೇವಾರಿ ಯ ವಿವರ
Property form No. PF No.123/2023			on 01/09/2023	
1	Type: Others Property Description: 26 KG 860 Grams Ganja(Roots, Stem, Leaf & Buds) Including Plastic Bag	1,580,000.00	Behind House No 24. 5th Cross, K.R. Road, Jayanagara 7th Block Bengatur City	Seized and with Police
2	Type: Others Property Description: One DVD with Photographs & Videos Taken During the Panchanama	0.00	Behind House No 24. 5th Cross, K.R. Road, Jayanagara 7th Block Bengatur City	Seized and with Police
3	Type: Others Property Description 550 Grams Ganja (Roots, Stem, Leaf & Buds) Including Cora Cloth	40,000.00	Behind House No 24. 5th Cross, K.R. Road, Jayanagara 7th Block Bengatur City	Seized and with Police

If what was seized and the summary of the charge sheet are read in tandem, it would become an admitted fact that roots, stems, leaves, buds including plastic bag were put to weight. Whether this could be done is what is required to be noticed.

8. While it is a crime to permit cultivation of a cannabis crop in the residential premises, in the case at hand it is in the backyard amongst other weeds, general in nature. In such circumstances, considering identical issue, the Apex Court in the case of **ALAKH RAM V. STATE OF U.P.[1],** has held as follows:

> **"4. We heard the appellant's counsel and the counsel for the respondent. Under Section 8(*b*) of the NDPS Act, cultivation of opium poppy or any cannabis plant is prohibited and under Section 20 of the NDPS Act, such cultivation of cannabis plant is made punishable with imprisonment and fine. In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant. There must be supporting evidence to prove that the accused cultivated the plant and it is not enough that few plants were found in the property of the accused. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happen to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation.**
>
> **5.** In the instant case, one witness was examined to prove the nature of the offence committed by the accused. It was PW 1 who accompanied the police officers to the appellant's field. The evidence given by PW 1 is to the following effect:
> "Alakh Ram is a farmer. I do not know the number of those fields. I do not know the number of that field in which *ganja* was sown. I do not know as to who had cultivated the plants of *ganja*. That field is irrigated and Madho also works in that field. Neither have I seen anyone planting the *ganja* plants nor do I know when was it planted."
>
> **6. The above evidence is to be appreciated in the background of other evidence on record. Appellant**

[1] (2004)1 SCC 766

> **Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the *ganja* plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence, either oral or documentary, to show that the appellant has a right over the property from which the *ganja* plants were recovered. There is no evidence that the appellant cultivated these *ganja* plants. Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that these plants had been the result of cultivation. They may have sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of *ganja* plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant."**
>
> (Emphasis supplied)

The Apex Court holds that plants sprouted by natural growth does not amount to cultivation. In the case before the Apex Court, there were 17 ganja plants seized, but it was weighed together. Following the said judgment, the coordinate bench of this Court in the case of **KOLANDAISWAMY V. STATE OF KARNATAKA**[2], has held as follows:

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[2] **2017 SCC OnLine Kar 275**

"1. The petitioner is facing proceedings for an offence punishable under Section 20(B)(ii)(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985. **It is alleged that the petitioner was caught in possession of 4 Kg. 350 Gms. of Ganja. But however in the complaint, which is in the Kannada language it is indicated that what has been seized is "Ganja Soppu." It is pointed out by the learned counsel for the petitioner that it is not only described as Ganja Soppu, but it also includes stems, roots and seeds. It is pointed out that Ganja as defined under the NDPS Act is categorical and it would not include leaves, seeds or other parts of the cannabis plant. Therefore, the candid description of the material seized not only includes the flowering tops but also leaves, stems and roots of the cannabis plant, which would put it outside the definition of Ganja under the Act. In other words, the Act requires the parts of the plant to be segregated. Since other parts of the plant are also included, it would result in futile proceedings.**

2. The learned Government pleader would not dispute the position that Ganja has a particular definition under the NDPS Act and it would not include all the parts of the cannabis plant. **Further the quantity seized which is stated to be 4 Kg 350 gms. consisted of all parts of the cannabis plant other than the flowering tops, which would be misleading and would result in the entire exercise being futile.**

3. Accordingly, the petition is summarily allowed. The proceedings pending in Spl. Case No. 19/2016 on the file of the Principal District and Sessions Judge, Chamarajanagar, stands quashed."

(Emphasis supplied)

Subsequent to the afore-quoted judgments, the coordinate benche of this Court in the case of **STATE OF KARNATAKA v. MANJUNATH**[3] has held as follows:

> **"9.** On close reading of the evidence which has been produced and the material placed on record, the only contention which has been taken up by the learned counsel for the respondent is that in order to establish the case, the prosecution has to prove that the accused has cultivated the prohibited plants in the said land and in order to substantiate the said fact the prosecution has adduced the evidence.
>
> **10.** PW1 is the Village Accountant, PW2 the PWD Engineer and PWs.3 and 4 are the Police Official witnesses. On close reading of the said evidence though they have stated that they have found the ganja plants in Sy.Nos.11/1 and 9/2, they have not specifically proved with material to show that the accused had cultivated the said prohibited plants in the said land. **It is well proposed proposition of law by the Hon'ble Apex Court in the case of Alakh Ram Vs. State of Uttar Pradesh reported in 2004(1) Supreme 405, therein the Hon'ble Apex Court has observed that in order to prove the guilt of the accused under Section 20 of the NDPS Act, it must be proved that the accused has cultivated the prohibited plants and it is not enough that few plants were found in the property of the accused that he has cultivated the said plants in his land.**
>
> **11. Admittedly, as could be seen from the evidence and the spot mahazar Ex.P2, the said plants which have been spotted are not in a group and they were in a scattered manner and that too when they went to Sy.No.11/1, there they found two ganja plants weighing 5 Kgs. that itself clearly goes to show that if at all the accused is intending to cultivate the ganja plants, then under such circumstances he will not grow only two plants in his entire land. That too along with the other crops if only two plants are found, then under**

[3] **Crl.A.No.394 of 2018** disposed on **11-09-2019**

such circumstances it will not be called as even cultivation of the ganja plants.

12. Be that as it may. When the ganja plants were uprooted and weighed and they were weighing 5 kgs. the said ganja plants were wet and dried, then under such circumstances, weighing which has been made also appears to be not correct.

13. In order to weigh the ganja plants, the seeds, buds, flowers, stem and edges of the leaves has to be separated from the plant and then thereafter it has to be weighed. Without following the said procedure, the Investigating Officer has taken the entire plant for the purpose of weighing and has come to the conclusion that the said ganja weighed was 5 kgs.

14. One more crowning factor that is found from the case of the prosecution is that they continued the proceedings and went to Sy.No.9/2 and there they found 10 ganja plants and out of them, 4 ganja plants were dry plants and 6 ganja plants were wet and said ganja plants have also been seized. For the reasons best known to the Investigating Officer, the owner of the land i.e. Hemantha has not been arrayed as an accused in the present case. That itself clearly goes to show that it is not only a tainted investigation, but a malafide and defective investigation. Major portion of the ganja plants have been found in Sy.No.9/2 and only 2 ganja plants have been found in the land of the accused, then under such circumstances the case of the prosecution creates a doubt and it is well proposed principles of law that if any doubt arises in the case of the prosecution, then the said benefit should go to the accused.

15. Even it is well proposed proposition of law by the Hon'ble Apex Court as well as by this Court that the Investigating Agency has to follow the guidelines issued by the Narcotic Control Bureau column No. 1.18 and there must have a quantitative and qualitative test within 15 days and further 15 days of the seizure. The said procedure has also not been

followed to come to the conclusion that the said seized material is a ganja.

16. Though the FSL report has been produced, subsequently in order to come to the qualitative test, the said procedure has not been followed. In that light also the case of the prosecution creates a doubt and the benefit of doubt should go to the accused."

(Emphasis supplied)

Further, in the case of **APPAYYA V. STATE OF KARNATAKA**[4], the coordinate bench of this Court holds as follows:

"23. The learned Counsel for the appellant has relied on some authorities of the Hon'ble Supreme Court and as well this Court reported in (2004) 1 SCC 766 (*Alakh Ram* v. *State of U.P.*), it reads as under:

"We heard the appellant's Counsel and the Counsel for the respondent. Under Section 8(b) of the NDPS Act, cultivation of opium poppy or any cannabis plant is prohibited and under Section 20 of the NDPS Act, such cultivation of cannabis plant is made punishable with imprisonment and fine. In order to prove the guilt, it must be proved that the accused had cultivated this prohibited plant. There must be supporting evidence to prove that the accused cultivated the plant and it is not enough that few plants were found in the property of the accused. It is quite reasonable to assume that sometimes the plants may sprout up, if seeds happed to be embedded in earth due to natural process. If plants are sprouted by natural growth, it cannot be said that it amounts to cultivation.

24. In the instant case, one witness was examined to prove the nature of the offence committed by the accused. It was PWI who

[4] **2019 SCC Online Kar 4136**

accompanied the police officers to the appellant's field. The evidence given by PWI is to the following effect:—

> **"Alakh Ram is a farmer. I do not know the number of those fields. I do not know the number of that field in which Ganja were sown. I do not know as to who had cultivated the plants of Ganja. That field is irrigated and Madho also works in that field. Neither have I seen anyone planting the Ganja plants nor do I know when was it planted."**

25. The above evidence is to be appreciated in the background of other evidence on record. Appellant Alakh Ram, his father and brothers owned 70 bighas of land. The prosecution has not produced any document to show that the property from which the ganja plants were uprooted belonged to appellant Alakh Ram exclusively. The witnesses who were examined in support of the prosecution also have not given any evidence to show that this property belongs to appellant Alakh Ram. There is no satisfactory evidence, either oral or documentary, to show that the appellant has a right over the property from which the Ganja plants were recovered. There is no evidence that the appellant cultivated these Ganja plants. Having regard to the extent of the property and the number of plants recovered from that property, it cannot be said that these plants had been the result of cultivation. They may have been sprouted there by natural process and the appellant or anybody who is the owner of the property must not have been diligent in destroying the plants. There is no evidence to prove that there was cultivation of Ganja plants by the appellant and the Additional Sessions Judge wrongly convicted him as the evidence adduced by the prosecution was not carefully scrutinized by the Court. The High Court committed error in confirming the conviction and sentence of the appellant.

26. In the result, we find appellant Alakh Ram not guilty of the offence under Section 20 of

the NDPS Act. His conviction and sentence is set aside and his bail bonds would stand cancelled. The appeal is allowed accordingly."

… … …

29. The learned Counsel for the appellant is also relied on the decision of this Court reported in *((2010) 5 KCCR 4163):*, (2010) 5 Kant LJ 279 (*K.K. Rejji* v. *State by Murdeshwar Police Station, Karwar*), this Court had an occasion to explained definition of ganja provided under the Act. It is held that from the definition it is clear that;

> **"Ganja is defined under the provision of NDPS Act as follows.—**
>
> **2(iii)(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."**
>
> **From this definition it is clear that Ganja would mean only the flowering or fruiting tops excluding the leaves as also seeds.**
>
> **In the instant case, the prosecution has produced seizure panchanama-Ex. P.5, to show what was seized. It reads as follows.—**
>
> **"(1) to (2)**
>
> **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."

30. Initially, the charge against the appellant/accused was for the offence punishable under Sections 20(a), 20(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, in was incumbent upon the prosecution to establish it was Ganja as defined and its weight.**

31. This makes difference because the punishment prescribed by Section 20(b) of the Act depends on the quantity of the contraband seized. The Act prescribes three quantities small quantity, lesser than commercial quantity but greater than small quantity and commercial quantity.

32. This Court has to decide whether the ganja seized is a small quantity or commercial quantity sometimes it will be lesser than commercial but greater than small quantity. As per the notification at Sl. No. 55 small quantity is 1000 grams i.e., one kilogram and commercial quantity is 20 kilograms. In the case that was cited above, facts of the case were that whole plants were weighing 10 kilograms in two gunny bags. If the flowering or fruiting parts were removed which is defined under the Act the quantity would have been much less than the toted weight of the property seized.

33. In this case also, the Investigating Officer has weighed entire plants without segregating the fruiting and flowering. If that has hot been done then it would not possible to decide whether it was a small quantity or commercial quantity or lesser than the commercial quantity or more than small quantity. Consequently the very jurisdiction of the Court is affected. If the offence related to small quantity it will become punishable with rigorous imprisonment after a period of six months as provided under Section 20(b)(ii)(A) of the NDPS

Act. Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. If the quantity is more than small quantity but less than the commercial quantity it would be punishable with imprisonment for a term which may extend to ten years under Section 20(b)(ii)(B) of the Act. Thus the quantum of punishment also varies. Section 20 reads thus:

> **"Section 20. Punishment for contravention in relation to cannabis plant and cannabis.**—Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted there under.
>
> (a) cultivates any cannabis plant; or
>
> (b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable.
>
> (i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and
>
> (ii) where such contravention relates to clause (b).
>
> (A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;
>
> (B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;
>
> (C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one

lakh rupees but which may extend to two lakh rupees:"

34. The designated Court would get jurisdiction to decide a case only if punishment prescribed is more than three years. If the punishment prescribed is up to six months, special Court has no jurisdiction, the trial has to be conducted by the learned magistrate that is what held in the above said authority of the Hon'ble High Court.

35. Hence for all the above said reasons, the prosecution **has** miserably failed to prove the guilt of the accused beyond any reasonable doubt for the alleged offences. The conviction and sentence passed by the learned special judge is erroneous in law, facts and circumstances of the case and to the evidence on record hence the points answer in the negative. Hence this Court proceeds to pass the following.

ORDER

1. The appeal filed by the appellant is allowed.

2. The judgment of conviction and sentence dated 25.06.2010 passed by the Special Judge (Principal Sessions Judge), Belgaum in Special Case No. 47/2007 is set aside. Accused is acquitted of the charges leveled against him.

3. Bail bond shall stand cancelled.

4. Fine amount if any deposited shall be refunded to the accused.

5. Office to send back the records along with a copy of the judgment of this Court to do the further needful action."

(Emphasis supplied)

Subsequent to the afore-said judgment, the coordinate bench of this Court in the case of **MANJUNATH P V. STATE OF KARNATAKA**[5] has held as follows:

> **"21. In the case of ALAKH RAM VS. STATE OF U.P. [supra], the Hon'ble Apex Court has held that it must be proved that the accused has cultivated the prohibited plant voluntarily and in substantial quantity. In the said case, having regard to the extent of land jointly owned by the accused and his relatives, it is held that it was not proved that the land from which they were seized belonged exclusively to the accused or that he had any exclusive right over it or that it had been voluntarily cultivated by the accused. Hence, it is held that conviction could not be sustained.**
>
> **22.** In the case of **GOPAL VS. STATE OF M.P.** [supra] the Hon'ble Apex Court after considering that there was no evidence on record to show that as to who had placed the kadvi on the boundary of two fields, held that it cannot be surmised that the contraband was in concious possession of the appellant.
>
> **23.** In the case of **ILLYAZ ANWAR KHAN AND OTHERS VS. STATE OF KARNATAKA** [supra], this Court after observing that in the panchanama, it was nowhere mentioned that the seized ganja plants had flowering or fruiting tops or buds, cannabis leaves without flowering tops and buds cannot be termed as ganja. Hence, held that the accused is entitled to benefit of doubt.
>
> **24. In the case of K.K.REJJI AND OTHERS VS. STATE BY MURDESHWAR POLICE STATION, KARWAR [supra], this Court observed that it is necessary to separate the fruiting tops or flowering from the cannabis plant. Since ganja not having been separated and the entire plants having been weighed, the definite**

[5] **Crl.A.No.312 of 2019** disposed on **21-01-2020**

weight of actual flowering or fruiting tops of the ganja plant was not done, acquitted the accused.

25. Even in the present case, though the prosecution alleges that as many as 174 ganja plants were seized, however, the fruiting tops or flowering of the same have not been separated and weighed. FSL report at Ex.P31 is in respect of the 4 ganja plants taken as sample from the total ganja plants seized. It is not forthcoming as to whether fruiting tops or flowering from the plant were separated and weighed or tested. The officer issuing Ex.P31 has not been examined. Even otherwise, the prosecution has failed to establish beyond all reasonable doubt that it is the accused, who was cultivating ganja plants in the land in question. The material on record does not indicate the same. Hence, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt."

(Emphasis supplied)

If the facts obtaining in the case at hand are considered on the touchstone of what is held by the Apex Court in the case of **ALAKH RAM**, as followed by this Court in the afore-quoted judgments, the charge against the petitioner must fail for reasons more than one.

9. The prosecution has not placed an iota of evidence to demonstrate that the petitioner was cultivating ganja and the quantity of ganja found from the backyard of the petitioner was admittedly weighed along with the entire plants that were uprooted without segregation, which can be gathered from the P.F. quoted

supra. Therefore, it is an admitted fact that segregation of leaves and the actual ganja is not made prior to weighing the same and the charge sheet is filed. Therefore, the charge sheet is filed blatantly contrary to law, as laid down by the Apex Court and followed by this Court in the afore-quoted judgments.

10. In that light, petition deserves to succeed and accordingly, I proceed to pass the following:

ORDER

(i) Criminal Petition is allowed.

(ii) Entire proceedings in Spl.C.C.No.665 of 2024 pending on the file of XXXIV Additional City Civil and Sessions Judge and Special Judge for NDPS Cases at Bengaluru stand quashed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

Bkp
CT:MJ/SS