
(2010) 06 BOM CK 0143
In the Bombay High Court
Case No : Criminal Appeal No. 103 of 1998

Gangaram Chaudekar	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 50

Citation : (2010) 06 BOM CK 0143

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; B.R. Khekale, APP, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—This appeal is directed against the judgment and order dated 26.2.1998, rendered by the learned Joint District Judge and Additional Sessions Judge and Special Judge under N.D.P.S. Act, Nanded in Spl. (N.D.P.S.) case No. 3/1997, thereby convicting the appellant/(original accused) u/s 20(b)(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to suffer R.I. for three years and to pay fine of Rs. 10,000/- with default condition for non-payment of fine to suffer further R.I. for six months.

2. The factual matrix of the prosecution case, which can be unfolded, are as under:

PW 1 API Rajendra More i.e. complainant herein was in-charge of Mukhed police station at the relevant time i.e. in September, 1996 and at about 3.30 p.m. on 9.9.1996, when he was present in the said police station, he received a telephonic message that one person namely Gangarm Chaudekar i.e. appellant (original accused) was apprehended by ASI Bhurewar at S.T. stand of village Jamb, on suspicion that he was having Ganja in his possession. Said telephonic message was given by PW 6 P.C. Narayan Kambale attached to police out post of

village Jamb. Accordingly, PW 1 API More made an entry in the station diary about receipt of said message. Thereafter, he contacted to PW 7 Baburao Wadekar, Tahasildar on telephone and informed him accordingly. Thereafter PW 1 API More called two panchas including Sambhaji Bhalerao i.e. PW 2 and PW 1 API More proceeded towards Tahasil Office along with panch PW 2 Sambhaji Bhalerao and members of raiding party. A letter of request was given to PW 7 Baburao Wadekar, Tahasildar, requesting him to accompany with the raiding party to village Jamb to effect the raid. Pursuant to the said letter, PW 7 Baburao Wadekar Tahsildar, API More-PW 1 and PW 2 Sambhaji and other members of raiding party proceeded towards village Jamb and reached at S.T. stand of village Jamb and found that ASI Bhurewar was standing at ST stand along with one apprehended person and ASI Bhurewar produced said person before them. On enquiry, said person gave his name as Gangaram Chaudekar i.e. appellant (accused). He was informed about proposed search and he gave no objection for his personal search. Moreover, members of the raiding party and panchas gave search to the accused and thereafter they took search of the accused and during said search they found one bag of gunny cloth in his hand and it was searched and found to be containing one plastic bag therein which is usually used as cement bag and same was stitched and it was fully packed with some substance. Accordingly, members of raiding party opened the stitches of the said plastic bag and it found to contain dried leaves, smelling like ganja. The members of the raiding party asked to bring one weighing balance and scale from PW 5 Bhanudas Gond, a grocery shop owner and weighed the said dried leaves of Ganja and weight thereof was found to be 5 kilograms. Thereafter 25 grams of the said quantity of dried leaves i.e. Ganja were separated for sample purpose and same was packed in a small bag which was stitched and was labelled with the signatures of panchas as well as with the signatures of PW 1 API More and PW 7 Tahsildar Wadekar, as well as rest of the quantity of Ganja was also packed and labelled with the signatures of aforesaid persons. Both the said packets i.e. sample packet and packet containing bulk of ganja were seized under the panchnama (Exh 18) which was drawn at the said spot. Thereafter members of raiding party returned to Mukhed Police station along with seized articles and accused herein.

3. PW 1 API More lodged complaint (Exh 17) against the accused under CR No. 73/1996 u/s 20(b)(i) of Narcotic Drugs and Psychotropic Substances Act, 1985 and accused was arrested under the said CR on 9.9.1996. Moreover, the information of raid was given to the superior officer on telephone as well as in writing (Exh 20).

4. It is the case of the prosecution that on 11.9.1996 sample packet containing leaves of ganja was sent to Chemical Analyzer's office Aurangabad through Prakash Wazirge i.e. carrier along with forwarding letter (Exh 21). The statements of eye witnesses were recorded during the course of investigation. Thereafter Chemical Analyzer's report was received from Chemical Analyzer's office on 12.10.1996 (Exh 22) which was positive for detection of ganja in the

sample contain. Accordingly, after completion of investigation charge sheet was filed against accused before Special Court under Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as "the Act of 1985" for short) at Nanded on 28.10.1996.

5. Thereafter learned Special Judge (N.D.P.S.) Nanded framed charge against accused at Exh 8 on 28.8.1997 and accused pleaded not guilty to the said charge. The defence of the accused is of total denial and he stated that he has been implicated in the present case falsely. In his statement recorded u/s 313 of Code of Criminal Procedure the accused stated that he was taken to Mukhed Police Station not from S.T. Stand of village Jamb, but from his tea Stall at Mukhed by PW 6 P.C. Kamble since the accused demanded Rs. 180/- towards Tea charges due from him and also since accused had strained relations with ASI Bhurewar, and accordingly, accused denied the possession of ganja at the relevant time and claimed to be innocent.

6. To substantiate the charges levelled against the appellant/accused the prosecution has examined in as much as 7 witnesses which are as follows:

- 1) PW 1 API Rajendra Madhavrao More ? complainant.
- 2) Sambhaji Tulshiram Bhalerao ? panch.
- 3) Prakash Ganpatrao Wazirge ? Police constable of Mukhed Police Station, who took search of the accused and also carried sample to CA office, Aurangabad for examination purpose.
- 4) PW 4 Suryakant Madhavrao More, servant in cloth shop.
- 5) Bhanudas Shankarrao Gond ? Grocery shop owner from whom weighing balance and weights were taken to weigh ganja.
- 6) PW 6 Narayan Sheshrao Kamble ? Member of raiding party
- 7) PW 7 Baburao Amrutrao Wadekar Tahsildar.

7. After scrutinizing and appreciating the evidence adduced and produced on record, the learned Special Judge (N.D.P.S.), Nanded convicted the accused u/s 20(b)(i) of the Act of 1985 and sentenced him to suffer Rigorous Imprisonment for the period of three years and directed to pay fine of Rs. 10,000/- with default condition for non payment of fine to suffer further Rigorous Imprisonment for six months. Being aggrieved and dissatisfied by the said judgment and order of conviction, the appellant has preferred the present appeal challenging the same requesting for quashment thereof.

8. In order to deal with the legal position and factual aspects in the matter, I feel it necessary to advert to the material evidence adduced and produced on record. In the said context, coming to the evidence of PW 1 API Rajendra More, who has deposed that he was attached to Mukhed Police Station on 9.9.1996 and was present in the police station and at about 3.10 p.m. he received a telephone from

P.C. Narayan Kamble of village Jamb informing that one Gangaram Chaudekar i.e. appellant (accused) herein was apprehended at S.T. Stand of village Jamb on suspicion that he was having ganja in his possession. Accordingly, PW 1 Rajendra stated that an entry was taken in station diary about said information and PW 1 Rajendra informed Taluka Magistrate (Tahsildar) about said telephonic information and took his staff and went to Tahasil Office. He gave a written letter to Tahsildar requesting to accompany with him for the raid. Moreover, panchas including PW 2 Sambhaji Bhalerao were also called and members of raiding party proceeded to S.T. Stand of village Jamb along with panchas. He further stated that after reaching there, they found that ASI Bhurewar was standing at S.T. Stand who had apprehended one person there. Hence they went near to him and ASI produced that person before them. On enquiry with that person, he gave his name as Gangaram Chaudekar i.e. appellant herein. He was informed about proposed search. He stated that he had no objection if the search of his person was taken. Thereafter, members of raiding party and panchas gave search of their person to accused and then members of raiding party took the search of the accused and during the search of the accused they noticed one bag (made up of gunny cloth) in his hand and same was searched and it found to contain one another plastic bag, which is usually used as cement bag and said cement bag was stitched and it was fully packed with some substance. Hence, PW 1 API Rajendra More stated that members of raiding party opened the stitches of that bag and it found to contain dried leaves smelling like Ganja.

9. PW 1 API Rajendra More further stated that one weighing balance scale and weights were procured and said dried leaves of Ganja were weighed and its weight was found to be 5 kilograms. PW 1 API Rajendra took out 25 grams quantity of said ganja leaves as a sample and same was kept in small cloth bag which was stitched and same was labeled with the signatures of panchas and Executive Magistrate (Tahsildar). Moreover, rest of the quantity of ganja was seized and labeled with the signatures of panchas as well as signatures of Tahsildar and PW 1 API Rajendra. Panchnama (Exh 18) was drawn and Taluka Magistrate as well as two panchas put their signatures thereon and the aforesaid articles were sealed under the panchnama and were taken to Mukhed Police Station along with the accused and accused was arrested on the same day i.e. on 9.9.1996. Accordingly, PW 1 API Rajendra lodged complaint (Exh 17) in the police station against accused for having illegally possessed ganja under CR No. 73/1996 u/s 20 of the Act of 1985.

10. PW 1 API Rajendra further stated that information of the raid was given firstly on telephone and then in writing to the Superior Officer (Exh 19) and copy of the said report is at (Exh 20).

11. PW 1 API Rajendra further deposed that on 11.9.1996 sample of Ganja leaves were sent to C.A. office Aurangabad along with forwarding letter (Exh 21) for examination purpose. Moreover, statements of the witnesses were recorded and CA report (Exh 22) was received on 12.10.1996. Accordingly, after

completion of investigation, charge sheet was filed against accused before learned Joint District Judge & Special Judge (N.D.P.S. Act) Nanded on 28.10.1996.

12. During the cross examination, PW 1 API Rajendra stated that there was out post at Jamb (BK) and he went at police out post, but no entry regarding present offence was made in the police out post. He also stated that he does not remember whether copy of the panchnama was given to the accused. He further stated that arrest panchnama was not drawn. He also stated that during the period from 9.9.1996 to 11.9.1996 sample packet was at the police station and same was deposited with Muddemal Moharil, but he does not have record to show the same. He further stated that statement of P.S.O. was not recorded by him. Moreover, report to the Superior Officer was made after filing of the complaint and registration of the crime. Besides that two suggestions were given to PW 1 API Rajendra that he has filed false complaint against accused at the instance of ASI Bhurewar, but same was denied by him. It was also suggested to him that no ganja was found with the accused but same was denied by him.

13. Considering the testimony of PW 1 API Rajendra More, although there was police outpost at Jamb (BK) and although PW 1 API Rajendra visited said out post, no entry regarding present offence is made in the said out post. Moreover, he does not remember whether copy of the panchnama was handed over to the accused but he categorically stated that signature of the accused was not obtained on said panchnama. Hence, it is obvious that there is no proof to show that copy of the seizure panchnama was handed over to the accused, which apparently amounts to lacuna in the seizure of alleged ganja. Moreover, PW 1 API Rajendra also admitted that panchnama in respect of arrest of the accused was not prepared which also amounts to lacuna in the prosecution case. Moreover, although PW 1 API Rajendra stated that during the period from 9.9.1996 to 11.9.1996 sample packet was kept in the police station under the custody of Muddemal Mohril, he stated that he has no record to show the said fact and said material infirmity also hampers the case of the prosecution. Since suspicion is created whether same quantity of ganja, which was separated for sample purpose at the time of seizure was kept in the police station during the period from 9.9.1996 to 11.9.1996, and whether said sample quantity was sent to C.A. office for examination purpose and whether CA examined the said sample quantity which was seized and separated at the time of alleged seizure and whether CA report pertains to same sample quantity which was seized and separated at the time of seizure and hence CA report cannot be tacked with the sample quantity which was allegedly separated at the time of seizure to connect the appellant-accused with the alleged crime.

14. The testimonies of PW 3 P.C. Prakash Wazirge and P.W.6 P.C. Narayan Kambale also reflect that they were members of raiding party and participated in the raid conducted at S.T. Stand of village Jamb allegedly and recovered the quantity of ganja from the possession of the accused, and particularly, PW 3 Prakash stated that he took search of the accused and during search of the

person of the accused he noticed one bag made up of Gunny cloth in his hand and same was searched and it found to contain one polythene bag inside it. Inside that polythene bag there was one yellow coloured plastic bag of Birla cement and inside that bag he noticed a mixture of leaves with greenish black colour which was smelling like Ganja. He also stated, as per version of PW 1 API Rajendra, that sample quantity of 25 grams of Ganja was separated, it was taken in a cotton made pouch and labeled with the signatures of panchas, Tahsildar and PW 1 API Rajendra and remaining quantity of ganja was packed and labeled with the signatures of panchas, Tahsildar P.W.7 Baburao Wadekar and panchanama was drawn and said packets were seized under the panchnama and accused and seized articles were taken to Mukhed Police Station and PW 1 API Rajendra lodged complaint against said accused. He further stated that on 11.9.1996 he carried sample packet to CA office Aurangabad and submitted it in the said office. Moreover, on 12.9.1996 along with the sample prescribed form for examination of CA was carried by him and original of the prescribed form was handed over to CA office and acknowledgment was obtained on the office copy thereof.

15. In the cross examination, suggestion were given to said witness that panchnama was prepared at the police station itself and signature of panchas were obtained there only, but same was denied by him. It was also suggested to him that he deposed falsely that 5 kilograms of ganja was found with the accused but same was denied by him. It was further suggested to him that at the instance of ASI Bhurewar a false case was filed against accused but same was denied by him. He also stated that along with greenish coloured leaves there were some granule like substance. Accordingly, testimony of PW 3 Prakash Wazirge is on the line of testimony of PW 1 A.P.I. Rajendra in respect of conducting the raid and search of the accused and seizure of Ganja from the possession of the accused.

16. Coming to the testimony of PW 6 P.C. Narayan Kamble, who is one of the members of raiding party as aforesaid, has deposed on the line of PW 1 API Rajendra More and PW 3 Prakash Wazirge in respect of raid, search and seizure of 5 kilograms quantity of ganja from the possession of the accused. PW 6 P.C. Narayan Kamble has stated in his deposition that after recovery of about 5 kilograms ganja from the possession of the accused, quantity of 25 grams out of it was separated for sample purpose and said packet was labelled with the signature of panchas and said packet was sealed and packet containing remaining quantity of Ganja was also seized after labelling it under the signatures of panchas, however testimony of PW 6 P.C. Kamble is silent in respect of preparation of panchnama on the spot and seizure of the said sample packet and packet containing bulk quantity of Ganja under the said panchnama and it denied the suggestion that false panchnama was made at the police station.

17. That takes me to the deposition of PW 7 Baburao Wadekar, Tahsildar who has

deposed in his deposition that on 9.9.1996 at about 3.10 p.m. he received a telephonic call from API More informing that some ganja was caught at village Jamb and requested to accompany him for the raid to be effected at jamb and within few minutes PW 1 API Rajendra came to his office and gave a letter to him that he should accompany him to Jamb. Thereupon PW 7 Tahsildar, Baburao Wadekar went along with PW 1 API Rajendra More, police staff and two panchas. He also took his official vehicle whereas police staff and panchas proceeded by police vehicle and they went to village Jamb and reached in front of ST stand at Jamb. One constable was standing in front of said S.T. stand along with one person with whom ganja was found. He further stated that they gave their own searches and there after police took search of the accused and found that he had a gunny bag containing ganja. The gunny bag was stitched at mouth by means of string and said mouth of gunny bag was opened in presence of panchas and it found to contain dried greenish coloured leaves smelling like ganja. Accordingly, ASI Bhurewar brought a weighing balance through constable and ganja was weighed on balance and it was found to be 5 kilograms. He further stated that quantity of 25 grams of ganja was separated for sample purpose and same was labeled with the signatures of panchas as well as PW 1 API Rajendra and PW 7 Baburao Wadekar scribed their signatures thereon, a wax seal was put on the said sample pouch. He further stated that remaining quantity of ganja was also packed and was labeled with the signatures of panchas, PW 1 API Rajendra and PW 7 Baburao Wadekar, Tahsildar and same was also sealed. He also stated that panchnama was drawn on the spot by the police and aforesaid articles were seized there under and members of raiding party were returned to Mukhed Police station along with the accused and seized ganja.

18. During the cross examination PW 7 Baburao stated that he did not take entry in any record with him about telephonic talk with PW 1 API More as well as he did not make any entry when he left his office along with PW 1 API More. He also stated that he did not inform to his superior officer that he was proceeding to village Jamb. He further stated that there is no entry in his diary as well as in the log book about his visit to village Jamb. He further admitted that purpose of taking search of the person of the accused was not disclosed to him. He also admitted that he did not give an idea to the accused that he was Taluka Magistrate. He further admitted that they did not ask the accused whether he had any objection for the search of his person. He also stated that he does not remember whether copy of the panchnama was handed over to the accused. He further stated that there was no weight of five kilograms.

19. Coming to the testimony of PW 2, Panch witness Sambhaji Tulshiram Bhalerao, who has deposed that he was summoned by PSI of Mukhed Police station by a letter and accordingly, after obtaining permission of his officer he went with police to village Jamb along with PW 1 API Rajendra More and some constables. Moreover, PW 7 Wadekar Tahsildar had come to said village Jamb by his own vehicle and accordingly he stated that they went in front of S.T. Stand, Jamb and there was one person apprehended by ASI Bhurewar. He further stated

that PW 7 told said person that his person was to be searched on suspicion that he was having ganja. Then they gave search of their bodies to the accused i.e. apprehended person and there after person of the accused was searched by PW 7 and PW 1 API Rajendra and one bag made up of gunny cloth was found in the hand of the accused and inside the gunny bag there was one polythene bag containing another bag of cement cloth and in the said cement bag they noticed ganja i.e. dried leaves of ganja which gave smell of ganja.

20. He further stated that ganja was weighed on balance and quantity was found to be 5 kilograms and out of that, a quantity of 25 grams was taken as sample and both said packets i.e. sample packet and remaining quantity of ganja packet were stitched and packed and same were labeled with the signatures of panchas and signature of PW 1 API Rajendra More and Tahsildar and wax seal was put thereon and said packets were seized under the panchnama (Exh 18) which was prepared on the spot.

21. In the cross examination PW 2 Sambhaji stated that he signed the panchnama at the police station itself. Hence suggestion was given to him that panchnama was not made in his presence and he did not go to Jamb, but same was denied by him. He also stated that he does not know from where police person secured a pouch for packing the sample. Suggestion was given to him that police did not obtain his signature on paper label at Jamb and that they obtained his signature in the police station, but same was denied by him.

22. On the aforesaid background of the evidence, learned Counsel Mr. S.S. Choudhary for the appellant canvassed that although personal search of the appellant was conducted, the testimonies of PW 1 API Rajendra More, PW 3 P.C. Prakash and PW 6 P.C. Narayan Kambale as well as PW 7 Baburao Wadekar Tahsildar and PW 2 Sambhaji Bhalerao are silent in respect of appraisal of right of the accused to him to be searched before the nearest gazetted officer or Magistrate, prior to conducting his search and prior to recovery of alleged ganja from his possession. He also submitted that even PW 7 Baburao Wadekar Tahsildar failed to apprise the accused prior to conducting his personal search that he was the Taluka Magistrate and if he wanted, his search could be conducted in his presence or before any other nearest gazetted officer or Magistrate, who could be called and in his presence search of the accused could be conducted, which also sustains fatal blow to the prosecution case and hampers the case of the prosecution since it amounts to non compliance of mandatory provisions of Section 50 of the Act of 1985 which vitiates the search, recovery and seizure of the ganja from the possession of the accused, and further vitiates the trial, and consequently, entitles the appellant/accused to be acquitted. The learned Counsel for the appellant further pointed out that testimonies of PW 1 API Rajendra and PW 3 P.C. Prakash are silent in respect of sealing of the sample packet and packet of bulk quantity whereas PW 6 P.C. Narayan Kambale has stated that said packets were sealed, but PW 7 Baburao Wadekar, Tahsildar stated that said packets were sealed with wax seal and

accordingly it is submitted that there is variance between the testimonies of aforesaid witnesses in respect of sealing of the said packets. Apart from that, learned Counsel for the appellant urged that the testimony of independent witness panch PW 2 Sambhaji, who stated that wax seal was put on the said packets and therefore, it is submitted that there is variance in the testimony of PW 2 panch Sambhaji and police witness PW 1 API Rajendra and PW 3 P.C. Prakash and hence it is canvassed that suspicion is created that whether really sample packet and packet containing bulk quantity of ganja were sealed at the time of seizure, and consequently, urged that said lacunae, infirmities and deformities create suspicion in respect of prosecution case, and therefore, accused is entitled for acquittal and recovery of ganja from the accused cannot be fastened therewith, and therefore, accused cannot be held guilty for the alleged offence and is entitled to be acquitted giving benefit of doubt to him.

23. Learned APP Smt. Khekale countered the aforesaid arguments and supported the judgment and order rendered by learned Special Judge (N.D.P.S. Act), Nanded and submitted that reasoning adopted by the learned Judge while convicting and sentencing the appellant/accused cannot be faulted with since same is based on the sound footing and did not appear to be perverse. Accordingly, learned APP urged that present appeal be dismissed confirming the conviction and sentence awarded to the appellant/accused.

24. I have perused and scrutinized the material evidence adduced and produced on record and also perused impugned judgment under challenge dated 26.2.1998 as well as considered the submissions advanced by learned Counsel for the appellant and learned APP for the respondent anxiously, and I am inclined to accept the submission advanced by the learned Counsel for the appellant since there is vital lacunae in the prosecution case of non compliance of the mandatory provision of Section 50 of the Act of 1985 as rightly canvassed by learned Counsel for the appellant that testimonies of prosecution witnesses are silent in respect of appraisal or right to the accused to be searched in presence of nearest gazetted officer or Magistrate, prior to conducting his search, prior to recovery of alleged ganja from his possession and prior to seizure thereof. Moreover, although PW 7 Tahsildar Baburao Wadekar was Tahsildar/Taluka Magistrate, he failed to appraise the appellant accused that he was Taluka Magistrate and his search could be taken in his presence, if he desires so, otherwise he has got right to be searched before independent nearest gazetted officer or Magistrate prior to conducting his search and recovery of ganja and seizure thereof and said vital lacuna also hampers the case of the prosecution. Accordingly, due to non compliance of said mandatory provision of the Act of 1985 the alleged recovery of ganja from the possession of the accused comes under the doldrums and alleged recovery of ganja and seizure thereof from the possession of the accused comes under suspicion and trial stands vitiated, and therefore, the appellant/accused cannot be held guilty and deserves to be acquitted from the charges leveled against him.

25. Besides that, as rightly pointed out by learned Counsel for the appellant, there is variance in the testimonies of PW1 API Rajendra More and PW3 Prakash Wazirge on one part and the testimonies of PW2 Panch Sambhaji Bhalerao, PW6 PC Narayan Kamble and PW7 Tahsildar Baburao Wadekar on the other, in respect of sealing of sample packet and packet containing bulk quantity of ganja, since the testimonies of PW1 API Rajendra More and PW3 Prakash Wazirge are silent in respect of sealing of the said packets. PW6 PC Narayan Kamble stated that the said packets were sealed, whereas PW7 Tahsildar Baburao Wadekar and PW2 Panch Sambhaji Bhalerao stated that the said packets were sealed with wax seal. The said discrepancies create suspicion whether really said sample packet and packet containing bulk quantity of ganja were sealed at the time of its seizure.

26. Apart from that, as mentioned here-in-above, although search and seizure was effected on 9.9.1996, sample packet was sent to the office of Chemical Analyzer on 11.9.1996, and since, as stated by PW 1 API Rajendra More, there is no record in respect of deposit of the said muddemal property with muddemal Mohril during the said period, suspicion is created whether sample quantity which was seized at the time of alleged seizure is the same quantity which was sent to the Chemical Analyser's office for examination purpose, and therefore, chemical analysis report cannot be tacked with the said sample quantity and consequently accused cannot be connected with the alleged crime.

27. In the circumstances, after scrutinizing and appreciating the evidence on record, it is amply clear that there are infirmities, deformities and lacunae in the prosecution case, and therefore, the conviction and sentence inflicted upon the appellant/accused by the learned Trial Judge by way of judgment and order dated 26.2.1998 shall not sustain and same is required to be quashed and set aside by allowing the present appeal.

28. In the result, present Criminal Appeal No. 103 of 1998 is allowed and the conviction and sentence rendered by learned Joint District Judge, Additional Sessions Judge and Special Judge (N.D.P.S.), Nanded by judgment and order dated 26.2.1998 in Special (N.D.P.S.) Case No. 3 of 1997, stands quashed and set aside, and the appellant stands acquitted of the offence with which he was charged and convicted. Fine amount, if paid by the appellant, be refunded to him.

The appellant/accused is on bail. His bail bonds stand cancelled.