

HIGH COURT OF MADHYA PRADESH**BENCH GWALIOR****SINGLE BENCH:****HON'BLE SHRI JUSTICE G.S. AHLUWALIA****Criminal Appeal No.638/2012****.....Appellants: Suraj Singh & Ors.****Versus****.....Respondent: State of M.P.**-----
None for the appellants.Shri S.S. Dhakad, Public Prosecutor for the respondent/State.

Date of hearing : 03/05/2018

Date of Judgment : 09/05/2018

Whether approved for reporting : Yes

J U D G M E N T**(09/05/2018)**

Appellants Suraj Singh, Smt. Ramkali and Ram Singh have been convicted by judgment dated 8/8/2012 passed by Special Judge (NDPS Act), Shivpuri in Special Sessions Trial No. 1/2010. Appellants No. 1 and 2 were granted bail by this Court by order dated 22/8/2012 whereas appellant No. 3 was granted bail by this Court by order dated 10/9/2012. Thereafter, the appellants did not appear before the Registry of this Court on 2/4/2018 and, therefore, the case was listed before this Court on 9/4/2018 for non-appearance of the appellants along with an application (IA No. 2624/2018) for condonation of non-appearance of the appellants on 2/4/2018. On 9/4/2018, neither the appellants nor their counsel were present as the lawyers were abstaining from work. Accordingly, on 9/4/2018, the following order was passed:-

"It is made clear that this appeal may be heard finally on the next date of hearing. If none appears for the appellants on the next

date of hearing, then this Court may either decide this appeal by itself after going through the record or may appoint an *Amicus Curiae*.

List this case on 03rd May, 2018 for appearance of the appellants and hearing of this appeal in motion hearing itself."

Thereafter, the case was taken up on 3rd of May, 2018 for appearance of the appellants as well as hearing of this appeal in motion hearing itself. However, neither the appellants appeared before this Court nor their counsel appeared before this Court. Accordingly, on 3/5/2018, the following order was passed:-

"On 9.4.2018, none had appeared for the appellants as the lawyers were reported to be abstaining from work. Even the appellants did not appear before this Court on the said date. On 9.4.2018 itself it was made clear that the appeal may be heard finally on the next date of hearing, then this Court may either decide this appeal by itself after going through the record or may appoint an *Amicus Curiae*.

It is clear that the appellants after getting released on bail did not appear before the Registry of this Court on 2.4.2018 and inspite of the specific order dated 9.4.2018, neither the appellants are present nor their counsel is present. Therefore, under these circumstances in the light of judgment passed by the Supreme Court in the case of Surya Baksh Singh vs. State of U.P. Reported in (2014) 14 SCC 222, this Court has gone through the record.

Shri Dhakad is heard.

Reserved for judgment."

Accordingly, this Court, after going through the record of the trial Court and after hearing the Public Prosecutor, reserved the case for judgment.

Where the appellants were granted bail and if they decide not to appear before the Registry of this Court and even they remain unrepresented before the Court through their counsel, then only one conclusion can be drawn that the appellants, after obtaining bail from this Court, are trying to avoid the final

hearing of this appeal.

Under these circumstances, this Court was left with no other option, but to hear the Public Prosecutor as well as to go through the record with the help of the Public Prosecutor.

This criminal appeal under Section 374 (2) of CrPC has been filed against the judgment and sentence dated 8/8/2012 by which appellant No. 1 Suraj Singh and appellant No. 2 Smt. Ramkali have been convicted under Section 20 (b) (ii) (A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") and sentenced to undergo rigorous imprisonment of 4 years and a fine of Rs.4000/- with default imprisonment and all the appellants have been convicted for offence under Section 20 (a) (b) (i) of the NDPS Act and have been sentenced to undergo the rigorous imprisonment of four years and a fine of Rs.4000/- with default imprisonment.

2. The necessary facts for the disposal of the present appeal in short are that on 16/3/2010 at about 2:00 pm, Assistant Sub-Inspector P.N. Paul (PW-6) received an information, Ex.P-3 from an informer to the effect that, appellant No. 1 Suraj Singh and appellant No. 2 Ramkali, who is the wife of the appellant No. 1, are engaged in selling ganja from their house and they have cultivated cannabis plants in the field situated adjoining to their house. Thus, the information was recorded in Rojnamcha Sahna No. 555 (Ex.P-43/C) and the report under Section 42 of NDPS Act was prepared and the same was sent to SDO(P) Pichhore through Constable Subodh which was delivered to Head Constable Beni Prasad on the same day at about 15:45. Thereafter, considering the urgency in the matter, the independent witnesses Krishna Kumar (PW-3) and Brikhbhan (PW-4) were summoned in the police station and their arrival in the police station was mentioned in Rojnamcha Sahna No. 558 (Ex.P-45/C) and the police party left the police station after mentioning their departure in Rojnamcha Sahna

No. 561 (Ex.-46/C). Thereafter, the police party reached the house of appellant Nos. 1 and 2 and they were given the information about the information received from the informant and the notices, under Section 50 of the NDPS Act, Ex.P-4 to Ex.P-6 were given and they were given an option that they may give the search of their house as well as the field to a gazetted officer but the appellants expressed that they are ready and willing to give the search of their house as well as the field to the Investigating Officer. Accordingly, the Investigating Officer P.N. Paul (PW-6) prepared consent letters Ex.P-8 and P-9 and gave the search of himself as well as of the independent witnesses and the police party to the appellants and nothing objectionable was seized from the possession of the Investigating Officer as well as from the police party and the independent witnesses. Thereafter, the search panchanama Ex.P-11 of the house of appellant No. 1 Suraj and his wife appellant No. 2 Ramkali was prepared and during search 1Kg 250 gms of ganja was recovered from an iron almirah kept in the house of appellants No. 1 and 2 along with the weighing scale, some currency notes and coins as well as pieces of newspaper. The seized ganja was made homogeneous and two samples of 50 gms each were prepared which were marked as Articles "A-1" and "A-2" and the remaining ganja was marked as Article "A". Thereafter, the search of the field of appellant Nos. 1 and 2 was carried out and total 485 cannabis plants were seized from the field and its total weight was 12kg and 300 gms. Two samples of 150 gms each were prepared and the same were marked as Articles "B-1" and "B-2" and the remaining cannabis plants were marked as Article "B". Thereafter, the ganja, seized from the house of appellants No. 1 and 2, cannabis plants, seized from the field of appellants No. 1 and 2, as well as weighing scale, currency notes, coins and pieces of newspaper, seized from the house of appellant

Nos. 1 and 2, were seized vide seizure memo Ex.P-19. Thereafter, the confessional statements of appellant Nos. 1 and 2 Suraj and Ramkali, Ex.P-23 and P-24, were recorded and 402 cannabis plants were seized from the field of appellant No. 3 Ram Singh and the total weight of the cannabis plants were 9kg and 100 gms. Two samples of 100 gms each were prepared which were marked as Articles "C-1" and "C-2" whereas the remaining plants were marked as Article "C" and the plants were seized from the field of appellant No. 3 vide seizure memo Ex.P-20. Appellant Nos. 1 and 2 Suraj Singh and Ramkali were arrested on the spot vide arrest memos Ex.P-21 and Ex. P-22. Thereafter, the entire police party came to the police station and the entire proceedings were mentioned in Rojnamcha Sahna No. 569 Ex.P-47/C. The seized contraband was deposited in the *malkhana* register Ex.P-40/C. Thereafter, the case diary was handed over to S.I. Vishwadeep Singh Parihar (PW-8) for further investigation. S.I. Vishwadeep Singh Parihar (PW-8), on the next day i.e. on 17/10/2010, went to the spot and prepared spot map Ex.P-31 and the report under Section 57 of NDPS Act Ex.P-25 was forwarded to the SDO(P). The seized samples of ganja were sent for chemical analysis to FSL Gwalior vide memo of the Superintendent of Police Shivpuri Ex.P-32 and its report Ex.P-33 was obtained. The statements of the witnesses were recorded under Section 161 of CrPC and, accordingly, the charge-sheet was filed.

3. The trial Court, by order dated 9/6/2010, framed the charge under Section 8/20 (a) of NDPS Act against appellant Nos. 1, 2 and 3 Suraj, Ramkali and Ram Singh. However, by order dated 4/6/2012, the additional charge under Sections 20(a)(b)(i) and 20(b)(ii)(A) of NDPS Act were framed against appellant Nos. 1 and 2 Suraj and Ramkali.

4. The appellants abjured their guilt and pleaded not guilty.

5. The prosecution, in order to prove its case, examined N.K.

Jain (PW-1), Beni Prasad (PW-2), Krishna Kumar (PW-3), Brikbhan (PW-4), Shripat Mehte (PW-5), P.N. Pal (PW-6), Anil Ekka (PW-7), Vishwadeep Singh Parihar (PW-8), Raghuveer Singh Pal (PW-9), Navratan Singh (PW-10), Naresh Kumar Sharma (PW-11) and Rajendra Kumar (PW-12).

6. The appellants examined Dr. S.K. Puranik (DW-1) in their defence.

7. The trial Court, by judgment dated 8/8/2012, convicted the appellants for offence under Section 20(a)(b)(i) of the NDPS Act and also convicted appellant Nos. 1 and 2 for offence under Section 20 (b)(ii)(A) of the NDPS Act and sentenced them to undergo rigorous imprisonment of 4 years and a fine of Rs.4000/- with default imprisonment for each of the offence. Since, the sentences have not been directed to run concurrently, therefore, it is clear that the sentences shall run consecutively.

8. Since, none has appeared for the appellants, therefore, this Court has gone through the judgment as well as the evidence led by the prosecution.

9. The Public Prosecutor, while supporting the judgment and sentence passed by the Court below, has submitted that although there was no need to give a notice under Section 50 of the NDPS Act as the personal search of the appellants was never carried out, but submitted that 1.25 kg of ganja was seized from the house of appellant Nos. 1 and 2 whereas 485 cannabis plants were seized from the field of appellant Nos. 1 and 2 and 402 cannabis plants were seized from the field of appellant No. 3. It is submitted that accordingly, the trial Court did not commit any mistake in convicting the appellants for the offences and as the ganja is used as a narcotic substance, therefore, it is spoiling the generations and, thus, the trial Court has not committed any mistake by awarding the jail sentence of four years and under these circumstances, the trial

Court did not commit any mistake in not directing that the sentences to run concurrently.

10. Heard the Public Prosecutor and perused the record.

11. N.K. Jain (PW-1) is the witness from whose shop the police personnel had taken the weighing machine with them. He has simply stated that his weighing machine was taken by the police personnel which was returned back after one hour.

12. Beni Prasad (PW-2) was working on the post of Reader, SDO(P), Pichhore, District Shivpuri. He has stated that on the said date, a report with regard to the receipt of information from the informer was received from Constable Subodh and as the SDO(P) was out of Station and the SDO(P), Karera was the in-charge of the office of SDO(P), Pichhore, but he too was not available and, accordingly, after receiving the report, he had returned the carbon copy. The report is Ex.P-1. Thereafter, on 17/3/2010 also, the SHO, Police Station Khaniyadhana had sent the report regarding the seizure of cannabis plants and its photocopy is annexed with the record. In the cross-examination, this witness has stated that since the SDO(P), Pichhore was already transferred, therefore, his post was lying vacant and he tried to contact the SDO(P), Karera, but he was not available. He further stated that report Ex.P-1 was received by him at 15:45 and the acknowledgment was given to Constable Subodh.

13. Krishna Kumar (PW-3) and Brikhbhan (PW-4) are two independent witnesses who were accompanying the police party and both of them have turned hostile and have not supported the prosecution case.

14. Shripat Mehte (PW-5) was posted as the constable in Police Station Khanidhana. On 17/3/2010, he had delivered a report with regard to the seizure of cannabis plants to the office of SDO(P) Pichhore, District Shivpuri, which is Ex.P-25. In cross-examination, he has stated that this report was

delivered by him on 17/3/2010 at 3:10 pm.

15. P.N. Pal (PW-6) is the person who had carried out the search. He has stated that on 16/3/2010, he was posted on the post of A.S.I. and had received an information from an informant that appellant Nos. 1 and 2 Suraj Kushwah and Ramkali are engaged in the business of selling ganja. He tried to pass on this information to his superior officer, but as he could not contact him, therefore, a written report was sent to SDO(P), Pichhore, Ex.P-1. The panchanama with regard to inability to contact the SDO(P), Pichhore is Ex.P-2 and the panchanama with regard to information received from the informant is Ex.P-3. The independent witnesses were summoned and they were informed and, thereafter, the police force and the independent witnesses went to the house of the accused persons. The police party reached to the house of the accused persons at 15:30 and appellant Nos. 1 and 2 Suraj and Ramkali were inside the house and they were called and they were informed that the police force has received an information with regard to the availability of ganja and, therefore, they have come to carry out the search. Appellant Nos. 1 and 2 agreed for giving their search and the written notices given to the accused persons are Exs. P-4 and P-5. The consent panchanama were prepared which are Exs.P-8 and P-9. Thereafter, this witness gave his personal search as well as the search of the police force and the independent witnesses was given to appellant Nos. 1 and 2 and the search panchanama is Ex.P-10. Thereafter, the house was searched and the search panchanama was prepared. During search, in an iron almirah, ganja was found kept in a plastic bag and weighing scale was also kept with 50, 100, 200 and 500 gms of iron weights whereas 20-20 gms of copper weight and three weights of 10 and 5 gms were found. One iron safe was also found. Two currency notes of Rs.100/-, 15 currency notes of Rs.50/-, 12

currency notes of Rs.20/-, 50 currency notes of Rs.10/- and 120 currency notes of Rs.5/- were found. 75 coins of Rs.2/-, 120 of Rs. 5/- were found and 80 coins of Rs.1/- were found. In all, total ten thousand five hundred and twenty rupees were found and 45 pieces of newspaper which is used for preparing the packet of ganja were also seized. The entire material was seized vide seizure memo Ex.P-11. Thereafter, from the courtyard of the house, 485 cannabis plants were seized and its panchanama is Ex.P-17. The ganja, which was seized from the house, was weighed which was 1kg and 250 gms. Two samples of 50 gms each were prepared which was marked as Articles "A-1" and "A-2" and the remaining ganja was marked as Article "A" and its panchanama Ex. P-16 was prepared. The ganja was identified by tasting the same by this witness and the identification panchanama Ex.P-13 was prepared. The scale was inspected and the inspection panchanama is Ex.P-15. Total 485 cannabis plants were recovered which were weighed and the total weight of 12kg and 300 gms was found. Two samples of 150 gms each were prepared which were marked as Article "B-1" and "B-2" and the remaining plants were marked as Article "B". All the cannabis plants were seized vide seizure memo Ex.P-19 and appellant Nos. 1 and 2 were arrested vide arrest memos Ex.s P-21 and P-22. On the same day, appellants Suraj and Ramkali were interrogated who informed that the field of Ram Singh is adjoining on which also they had cultivated the cannabis plants and, accordingly, the cannabis plants were seized from the field of appellant No. 3 Ram Singh. The confessional statements of appellant Nos. 1 and 2 are Ex.s P-23 and P-24. After recording the confessional statements of appellant Nos. 1 and 2, the notices were given to appellant Nos. 1 and 2 which are Ex.s P-6 and P-7 and they gave their consent for the search which is Ex.P-12 and on search total 402 cannabis plants were found from the field of appellant No.

3 Ram Singh and its total weight was 9kg and 100 gms. Two samples of 100 gms each were prepared which were marked as Article "C-1" and "C-2" and the remaining cannabis plants were marked as Article "C". The seizure memo is Ex.P-18. The ganjas were tasted and, after smelling the same, they were found to be ganja and the identification panchanama Ex.P-14 was prepared. Seizure memo Ex.P-20 was prepared. The police party, after coming back to the police station, registered the FIR, which is Ex.P-26 and, thereafter, the investigation was handed over to S.I. Vishwadeep Parihar. This witness was cross-examined and, in cross-examination, this witness had admitted that he had received the information at 14:00 which was mentioned in *rojnamchahna*. However, he admitted that he has not brought the said *rojnamcha*. He further admitted that the house of the appellants is situated at a distance of 500 mts. from the police station and denied that the house of the appellants is situated at a distance of 50 feets and there is only one road separating the house of the appellants and the police station. This witness has further stated that he was told by Krishna Kumar that appellant No. 1 Suraj is the owner of the house from where the ganja was seized and Krishna Kumar is the neighbour of appellant No. 1 Suraj. There were two to three rooms in the house of Suraj and at the time of search, only cannabis plants were recovered and no other plants was found. This witness has further stated that the police party had gone on the jeep and the entire proceedings were done in the presence of Krishna Kumar and Brikhbhan. He further stated that after about half an hour of the registration of the offence, the SHO had also come back to the police station. He denied that appellant No. 1 is a completely blind person. He has stated that he can see to some extent. He further denied that the cannabis plants were not cultivated by Suraj. He further stated that the cannabis plants were of the height of 1 to 3 feets and

further denied that the plants were not cultivated, but they had grown up on their own. He further denied that the cannabis plants were not sealed. He further stated that the cannabis plants were sealed by wrapping the same in the cloth. The seized contraband was handed over to the Head Constable and this witness has stated that thereafter, he cannot say that what transpired thereafter because the investigation was handed over to the SHO. This witness further denied that one lady known as Seema was residing in the said house. He further denied that false case was prepared at the instance of one Ummed Singh. He further denied that Ummed Singh used to tease Seema and, therefore, a false report has been lodged. He further denied that the daughter of Suraj Singh, known as Rekha, was also residing in the said house. He further stated that at the time when the search was made, Rekha was not there. He further stated that the copy of all the notices were given to the appellants. A question was put by the counsel for the appellants to this witness that the appellants had an amount of Rs.20,000/-, which they had earned after selling vegetables, and since the said amount was kept by this witness and when the same was demanded back, the appellants were falsely implicated. The said suggestion has been denied by this witness. This witness has further admitted that no land is recorded in the name of Ramkali. During cross-examination, the seized contraband was produced before the Court and the same was opened and several cannabis plants, counting of which was not possible, were found in the packets. The cannabis plants were marked as Articles "L" and "M" in the Court. He further admitted that the entire cannabis plants were not sent for chemical analysis and he further admitted that no ganja was seized from the possession of Ram Singh. However, he stated that as Ram Singh had run away from the spot, therefore, the cannabis plants were seized from his field in his

absence. He further denied that Ramkali and Suraj had not given their confessional statements Ex.P-23 and Ex.P-24 to this witness. The seized contraband was again called in the Court at the request of the counsel for appellant No. 3 and it was found that the packet contains the seizure slip containing signatures of appellant No. 1 Suraj and appellant No. 2 Ramkali. In cross-examination, this witness further admitted that the cannabis plants Articles "L", "M" and "N" were seized from the field of Ram Singh. However, it was admitted that Ram Singh was not present at the time of seizure. This witness further clarified that 1 kg and 250 gms of ganja was seized from the house of appellant No. 1 Suraj.

16. Anil Ekka (PW-7) has stated that he was working on the post of Patwari and as per *Khasra panchsala*, survey Nos. 743 and 719 were recorded in the name of Ram Singh and the copy of the same is Ex.P-27 and the copy of *khatauni* is Ex.P-28. Similarly, survey Nos. 730/A, 732/2 and 747/3 are recorded in the name of Suraj and the *khasra panchsala* is Ex.P-29 and the *khatauni* is Ex.P-30. This witness was cross-examined and this witness has stated that he used to inspect the area physically in the month of December and January and thereafter in the month of July and August. However, during his inspection, he had not found any plant other than the plants of vegetables. In the year 2008-2009, Ram Singh had sown tomato and cauliflower. In the year 2010, no crop was found and, therefore, no entry was made in the record.

17. Vishwadeep Singh Parihar (PW-8) has stated that on 16/3/2010, he received the case diary of Crime No. 56/2010 and prepared information Ex.P-25 and sent it to the SDO(P), Karera, District Shivpuri and the counter of the FIR was sent to the concerning Court. On 17/3/2010, spot map Ex.P31 was prepared and the statements of the witnesses were recorded. The seized samples of ganja were sent to FSL Gwalior by draft

signed by the Superintendent of Police, Shivpuri Ex.P-32 and the report received from FSL Gwalior is Ex.P-33. The revenue record was seized from the *patwari*. In cross-examination, this witness has stated that he had received the case diary at about 8:00 pm on 16/3/2010 and reached on the spot on 17/3/2010 at about 11:00 am and the spot map was prepared. Houses of several persons are situated near the house of appellant No. 1 Suraj. The agricultural field of Ram Singh is adjoining to the land of Suraj Singh. Only cannabis plants were found in the field of Ram Singh. He had collected the information with regard to the ownership of the agricultural field. The houses of Krishna Kumar Singh and Brikbhan, the independent witnesses, are situated within the radius of 100 mts. from the house of Suraj Singh. He further admitted that Ummed Singh was posted as the Police Constable in Police Station Khaniyadhana, but denied that at the instance of Ummed Singh, the false case was registered by P.N. Paul (PW-6). He further denied that he did not know that appellant Suraj Singh is blind or not. He further denied for want of knowledge that whether appellant Suraj Singh can walk without the help of anybody or not?

18. Raghuveer Singh Pal (PW-9) has stated that an information was received by ASI P.N. Pal (PW-6) with regard to the cannabis plants in the house of Suraj and this witness was posted as Head Constable-Writer in Police Station Khaniyadhana. ASI P.N. Pal (PW-6) tried to talk to SDO(P), Pichhore and the SHO, Police Station Khaniyadhana, but could not contact with them and, accordingly, independent witnesses Brikbhan and Krishna Kumar were summoned in police station Khaniyadhana and the information given by the informant was recorded in *rojnamchashna* and the *panchanama* was prepared which was sent to the SDO(P) Pichhore. The weighing scale was called through Constable Muveen. The police party

along with the independent witnesses went to the spot. However, this witness stayed back in the police station. ASI P.N. Pal (PW-6), after coming back from the spot, had brought the packets containing ganja and the same was kept in the *malkhana* and the entry was made by this witness in the *malkhana* register. In cross-examination, this witness has stated that the search was done by ASI P.N. Pal (PW-6) and this witness had not opened the packets which were handed over to him by ASI P.N. Pal (PW-6). He further admitted that at the time of depositing the contraband, the same was not weighed. The cannabis plants were also not counted. Apart from the contraband, weighing scale etc. were also deposited in the *malkhana* and on the sealed packets, the contents of the packets were also mentioned. He further stated that there were total six packets of samples and seal was already affixed on each packet and the specimens of all the seals were also given. The specimens were sent along with the samples.

19. Navratan Singh (PW-10) is the Head Constable posted in police station Khaniyadhana and he had brought the counter copy of FIR Ex.P-36 and its photocopy Ex.P-36/C. The copy of the FIR was sent to the concerning Court by dispatch entry No. 406 and the dispatch register is Ex.P-37 and its photocopy is Ex.P-37/C. The acknowledgment was received from the concerning Court in the *dak* book which is Ex.P-38 and its photocopy is Ex.P-38/C. He has brought the *rojnamchasahna* of Police Station Khaniyadhana and at S.No. 570, the fact regarding the registration of the FIR was mentioned which is Ex.P-39 and its copy is Ex.P-39/C. The seized contraband was deposited in the *malkhana* of Police Station Khaniyadhana vide Ex.P-40 and its photocopy is Ex.P-40/C. In cross-examination, this witness admitted that the *malkhana* register is not numbered and is not attested by any senior officer. However, he denied that 31/10 was added subsequently. He further

denied that before applying the whitener, something else was written and after applying the whitener, the entries with regard to the deposit of contraband was made. This witness further admitted that the entry Ex.P-40 is not in his handwriting and it also does not contain the signature of the person who had written the said entry.

20. Naresh Kumar Sharma (PW-11) has stated that on 18/3/2010, he left police station Khaniyadhana along with the samples as well as the memo prepared by the Superintendent of Police, Shivpuri. On 19/3/2010, he went to FSL Gwalior along with the samples of seized contraband and the draft and deposited the same and came back to Police Station Khaniyadhana on 20/3/2010 and deposited the receipt. This witness has also proved the *rojnamchashna* No. 624 in which his departure is mentioned which is Ex.P-41 and its photocopy is Ex.P-41/C and his arrival is Ex.P-42 and its photocopy is Ex.P-42/C.

21. Rajendra Kumar (PW-12) has produced the *rojnamchashna* of police station Khaniyadhana. At S.No. 555, the information given by an informer is mentioned which is Ex.P-43 and its handwritten copy is Ex.P-43/C. The departure of the police force from the police station is mentioned as *rojnamchashna* No. 556 which is Ex.P-44 and its photocopy is Ex.P-44/C. The arrival of the police force is mentioned at S.No. 558 which is Ex.P-45 and its handwritten copy is Ex.P-45/C. At S.No. 561, the departure for verification of the information given by the informer is mentioned which is Ex.P-46 and its handwritten copy is Ex.P-46/C and at S.No. 569 of *rojnamchashna*, the return of the police force along with the seized contraband and the accused is mentioned which is Ex.P-47 and its handwritten copy is Ex.P-47/C.

22. Thus, it is clear that the entire case hinges around the evidence of P.N. Pal (PW-6).

23. The appellants have examined Dr. S.K. Puranik (DW-1), who has stated that appellant No. 1 Suraj Singh was completely blind from his right eye and there was a whole in the retina of his left eye and the vision of Suraj Singh from the said eye was very poor and he could only realize whether the light is ON or not and on inspection, he had found 100% blindness. However, he further stated in his examination-in-chief that he cannot say that whether Suraj Singh was able to carry out any agricultural activity or not? The handicap certificate was issued by the Medical Board. This witness was the member of said Board. The Board was headed over by Dr. Govind Singh whose signatures are at B to B. However, in cross-examination, this witness has stated that appellant No. 1 Suraj Singh was inspected by the Medical Board on 9/7/2010. However, he cannot say that whether on 16/3/2010, appellant No. 1 Suraj Singh was able to see or not? He further admitted that he had never treated appellant No. 1 Suraj Singh.

24. If the case of the prosecution is considered, then it is clear that the entire case is based on the recovery of 1kg and 250 gms of ganja from the house of appellant No. 1 Suraj Singh and appellant No. 2 Ramkali as well as recovery of 485 cannabis plants from the field of appellant Nos. 1 and 2 as well as recovery of 402 cannabis plants from the field of appellant No. 3 Ram Singh.

25. So far as the case of Ram Singh is concerned, admittedly it was nowhere mentioned that Ram Singh, at the time of search or at the time when the police has reached to the house of appellant No. 1, he was present on the spot but, after noticing the police party, he ran away. According to *khasra panchsala* Ex.P-26 and *khatauni* Ex.P-28, it is clear that the land bearing survey Nos. 743 and 719 was recorded in the name of Ram Singh. There is nothing on record to show that Ram Singh was involved in conscious cultivating of cannabis

plants. The word "cultivating" as mentioned in Section 20 of the NDPS Act presupposes that the act of cultivation should be a conscious act on the part of the accused, but in the present case, except by saying that 402 plants of cannabis were seized from the field of appellant No. 3 Ram Singh, there is nothing on record to show that appellant No. 3 had ever cultivated the said cannabis plants. Even there is nothing on record to suggest that appellant No. 3 Ram Singh was in exclusive possession of his land as, according to the prosecution case itself, the land of Ram Singh is adjoining to the land of appellant No. 1 Suraj Singh and appellant No. 2 Ramkali. Furthermore, no notice was given to Ram Singh and no consent was obtained from him to carry out the search. As the cannabis plants were not seized from the field of Ram Singh in his presence and unless and until it is proved beyond reasonable doubt that the cannabis plants were seized, it cannot be said that appellant No. 3 Ram Singh was engaged in conscious cultivation of cannabis plants in his agricultural land. The search of the field of appellant No. 3 Ram Singh was carried out on the basis of the confessional statement made by appellant Nos. 1 and 2. Thus, everything in the field of Ram Singh was carried out in his absence as well as behind the back of appellant No. 3. Thus, in the considered opinion of this Court, the prosecution has failed to prove that appellant No. 3 Ram Singh had cultivated cannabis plants in his agricultural land. Furthermore, there is nothing on record that the cannabis plants were allegedly seized from the land, belongs to appellant No. 3 Ram Singh. The entire claim of the prosecution that 402 cannabis plants were seized from the field of appellant No. 3 Ram Singh is based on the confessional statement of appellant No. 1 and appellant No. 2. There is also nothing on record to show that the field of appellant No. 3 was adjoining to the field of appellant Nos. 1 and 2. Thus, this Court is of the considered

opinion that the prosecution has failed to prove beyond reasonable doubt that appellant No. 3 Ram Singh was involved in cultivation of cannabis plants in his agricultural field.

26. So far as the case of appellant No. 1 Suraj and appellant No. 2 Ramkali is concerned, Suraj Singh has taken a specific stand that he is almost blind and a certificate issued by the Medical Board has also been placed on record, a specific suggestion was also given to ASI P.N. Pal (PW-6) and in paragraph 27 of his cross-examination, he has stated that appellant No. 1 Suraj Singh is not completely blind, but he has some vision in his eyes. Therefore, there may be a dispute that whether appellant No. 1 Suraj Singh is completely blind or not, but one thing is clear that the weak vision of appellant No.1 Suraj Singh is admitted by the prosecution witness P.N. Pal (PW-6) himself.

27. The trial Court has discarded the medical certificate Ex.D-1 by the Medical Board mainly on the ground that appellant No. 1 issued Suraj Singh was medically examined after four months of the search and, therefore, it cannot be said that on the date of the search also appellant No. 1 Suraj Singh was blind or his vision was weak. The trial Court has also given a finding that appellant No. 1 Suraj Singh has got his medical certificate prepared in connivance with the doctors. The observation given by the trial Court does not appear to be correct in the light of the specific admission made by P.N. Pal (PW-6) in paragraph 27 of his cross-examination because he has stated that Suraj Singh was not completely blind, but he had some vision in his eyes. If appellant No. 1 Suraj Singh was completely healthy at the time of search, then there was no reason for P.N. Pal (PW-6) to admit that appellant No. 1 Suraj Singh was not completely blind, but he had some vision. He could have said that at the time of search, appellant No. 1 Suraj Singh was completely hale and healthy. However, such a reply was not

given by P.N. Pal (PW-6) which clearly shows that even on the day of search, appellant No. 1 Suraj Singh had limited vision or may be blind.

28. Be that as it may, but one thing is clear that in the present case, the independent witnesses Krishna Kumar (PW-3) and Brikhbhan (PW-4) have not supported the prosecution case.

29. The entire prosecution case is based on the evidence of P.N. Pal (PW-6). It is surprising that according to Raghuvver Singh Pal (PW-9), ASI P.N. Pal (PW-6), Constable Mukut Pratap Singh, Constable Muveen and Constable Ummad and others had gone to the spot. The prosecution has not examined even a single member of the police party. Although, the quantity of the witnesses is not material and only the quality of the witnesses is material and the evidence of P.N. Pal (PW-6) cannot be discarded merely because he is a police personal, but when the independent witnesses have not supported the prosecution case and the evidence of police personnel is always under scanner, then it was necessary for the prosecution to examine other members of the police party to corroborate the evidence of P.N. Pal (PW-6).

30. P.N. Pal (PW-6), in paragraph 42 of his cross-examination, has admitted that he had never seen the appellants selling ganja. However, he has admitted that the house of the appellants is situated at a distance of 500 mts. from the police station. When the house of appellants No. 1 and 2 Suraj Singh and Ramkali is situated quite nearer to the police station, then it is doubtful that the police station would never come to know about the fact that the cultivation of cannabis plants is going on at a place which is quite nearer to the police station. P.N. Pal (PW-6) had also admitted that he had never seen the appellants selling ganja. That means on earlier occasion, he had never received an

information/complaint with regard to the sale of ganja by the appellants. The prosecution has also not filed any document to show that the house, from where the ganja is alleged to have been seized from the possession of appellant Nos. 1 and 2 Suraj Singh and Ramkali, is in the ownership of appellants No. 1 and 2. There is no document on record to show that the house of appellant Nos. 1 and 2 is situated on the land recorded in the name of appellant Nos. 1 and 2. *Patwari* Anil Ekka (PW-7) has stated that he used to carry out physical round of the area twice in a year i.e. for the first time in the month of December and January and for the second time in the month of July and August and during his physical patrolling/inspection, he had not found any crop in the land of the appellants. Thus, the evidence of Anil Ekka (PW-7) does not corroborate the evidence of ASI. P.N. Pal (PW-6). No land is recorded in the name of appellant No. 2 Ramkali. Appellant No. 2 Ramkali is the wife of appellant No. 1 Suraj Singh whereas appellant No. 3 Ram Singh is the brother of appellant No. 1 Suraj Singh. ASI. P.N. Pal (PW-6) himself has admitted about the weak vision of appellant No. 1 Suraj Singh and this admission in the cross-examination is further corroborated by the medical certificate Ex.D-1 issued by the Medical Board. As per the medical certificate Ex.D-1 issued by the Medical Board, appellant No. 1 Suraj Singh was 100% handicapped as he had no vision in his right eye and has limited vision of just realizing the light in his left eye. Thus, according to the doctors, he was more or less 100% blind. Under these circumstances, it was not possible for a person, who is unable to see anything, that he would cultivate ganja or he would carry out any agricultural activity in his field and that is why Anil Ekka (PW-7) did not find any crop in the fields of Suraj Singh and Ram Singh. Since the prosecution has not examined any other member of the police party who had carried out the search and has relied upon

the evidence of P.N. Pal (PW-6) only and when the independent witnesses had turned hostile, therefore, it becomes essential to appreciate the evidence of P.N. Pal (PW-6) very minutely. Although his evidence cannot be discarded merely on the ground that he is a police personnel, however, in view of the admission made by P.N. Pal (PW-6) that appellant No. 1 Suraj Singh had a limited/weak vision coupled with the medical certificate Ex.D-1 issued by the Medical Board, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that appellant No. 1 Suraj Singh had cultivated cannabis plants.

31. So far as the case of appellant No. 2 Ramkali is concerned, as already held that the prosecution did not examine any of the members of the police party and merely by saying that the cannabis plants were seized from the field of appellant No. 1 Suraj Singh and appellant No. 2 Ramkali, P.N. Pal (PW-6) has not stated about the khasra number of the agricultural land of appellant No. 1 Suraj Singh and appellant No. 2 Ramkali. Even otherwise, it is not the case of the prosecution that any land was recorded in the name of Ramkali. As this Court has already come to a conclusion that the evidence of P.N. Pal (PW-6) is not worth reliance in the absence of any corroborative piece of evidence, therefore, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that appellant No. 1 Suraj Singh, appellant No. 2 Ramkali and appellant No. 3 Ram Singh had cultivated cannabis plants in their agricultural land.

32. Since the evidence of P.N. Pal (PW-6) has already been held to be unreliable, therefore, the prosecution has also failed to prove that 1kg and 250 gms of ganja was seized from the house of appellant No. 1 Suraj Singh and appellant No. 2 Ramkali. Accordingly, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable

doubt that appellant Nos. 1, 2 and 3 have committed the offence under Sections 20 (b) (ii) (A) and 20 (a) (b) (i) of NDPS Act and, accordingly, they are acquitted of all the charges.

33. The judgment and sentence dated 8/8/2012 passed by Special Judge (NDPS Act) in Special Sessions Case No. 1/2010 is hereby set aside.

34. The appellants are on bail. Their bail-bonds are discharged and they are no more required in this case.

35. The appeal succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
Judge
09/05/2018