

Manjee Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-27-1996

Reported in : 1996(2)WLC405; 1996(1)WLN138

Judge : R.R. Yadav, J.

Appeal No. : S.B. Cr. Misc. IInd Bail Application No. 395 of 1996

Appellant : Manjee

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

R.R. Yadav, J.

1. Heard.

2. This is second bail application. First bail application was rejected on 13.11.95 as not pressed for the reason that challan and F.S.L. report were not available to the accused applicant at that stage.

3. Perused the copy of charge-sheet furnished to accused applicant under Section 8/20 of the Narcotic Drugs and psychotropic Substances Act. 1985 (hereinafter referred as 'N.D.P.S. Act') for cultivating cannabis plants of 'Ganja'.

4. It is true that the cannabis plant and cannabis (Hemp) are two different contrabands under N.D.P.S. Act. Cannabis (Hemp) is defined under Section 2(iii) of the said Act which includes Charas and Ganja and also any mixture with or without any neutral material of any of the above forms of cannabis or any drink prepared therefrom.

5. Charas is defined under Section 2(iii)(a) of the N.D.P.S. Act which means separated resin in whatever form whether crude or purified obtained from the cannabis plant and also includes concentrated preparation and resin known as Hashish oil or liquid hashish.

6 Under Section 2(iii)(b) of the N.D.P.S. Act Ganja is also defined according to which Ganja is flowering or fruiting tops of the cannabis plant (excluding seeds) and leaves when not accompanied by the tops by whatever name they may be known or designated.

7. Cannabis plant is defined under Section 2(iv) of the N.D.P.S. Act which means any plant of genus cannabis.

8. It is easily deducible from the aforesaid definitions that Charas popularly known as Hashish is separated resin obtained from cannabis plant (Hemp) either from its natural discharge of resin through its pores or by its incisions by human hands. Thus charas is not a cannabis plant but it is resin obtained from it whereas Ganja is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by tops.

9. For deeper understanding of the controversy involved in the present case it is pertinent to mention that Bhang cannabis plants are of two kinds known as male and female. A Female cannabis plant is called PISTILLATE plants whereas male plants are identified by short Axillary Drooping Panicles. Female flowering tops quoted with resin are Ganja whereas fruiting leaves are called Bhang (see Vanoshadhi Nirdeshika [Ayurvediya Pharmacopia] written by Dr. Ram Sushil Singh published by Hindi Samiti, Suchna Vibhag, Uttar Pradesh, Lucknow.

10. According to Modi's Medical Jurisprudence and Toxicology 21st Edition, 1988, Section II toxicology chapter XXXIV page 248, 'Bhang', 'Siddhi Patti' are cannabis Sativa consists of dried leaves and fruiting shoots whereas Ganja has rusty green colour and a characteristic odour and consists of flowering or fruiting tops of the female plant quoted with resin. According to Modi's toxicology, Charas is concentrated resin exuding from the leaves and stems of the plant.

11. Here it is to be noticed that imports, exports, transports, manufactures, collections, sale or possession of Bhang is punishable under Section 54 of the Rajasthan Excise Act, 1950 (hereinafter referred as 'Act No. 2 of 1950') wherein intoxicating drug has been defined under Section 3(14) of the said Act. It is also to be noticed that cultivation of any hemp plant (Cannabis Sativa) is also punishable under Section 54(b) read with Section 54(g) of Act No. 2 of 1950 with imprisonment for a term which may extend to three years and with fine which may extend to Rs. 2,000/- Section 20 of the N.D.P.S. Act also provides punishment in relation to cannabis plant and cannabis for its cultivation and for its import, export, transport, manufactures, collection, sale or possession etc.

12. From the above provisions contained under the Act No. 2 of 1950 and N.D.P.S Act give an impression that the definition of intoxicating drugs and its punishments are overlapping where one cannot be obeyed without disobeying the other.

13. It is apparent from aforesaid two enactments that under Act No. 2 of 1950 Charas, Ganja and Bhang are included within the definition of cannabis (Hemp) whereas under N.D.P.S. Act Bhang is excluded. Bhang does not fall within the definition of cannabis (Hemp) as defined under Section 2(iii) of N.D.P.S. Act. It is also to be noticed that under Act No. 2 of 1950 cultivation of only cannabis (Hemp) plant i.e. Charas, Ganja and Bhang is an offence under Section 54(b) and punishable under Section 54(g) of the said Act whereas under N.D.P.S. Act cultivation of any cannabis plant which means any plant of the genus cannabis as defined under Section 2(iv) of N.D.P.S. Act is punishable under Section 20(a) read with Section 20(b)(i) of the said Act. In my humble opinion although 'Bhang' is excluded from the definition of Cannabis (Hemp) under the N.D.P.S. Act yet it does fall within the definition of cannabis plant and as such its cultivation is

punishable under Section 20(a) read with Section 20(b)(i) of the said Act. I am also of the opinion that cannabis (Hemp) is one of the species of cannabis plant, therefore, it cannot be held that since 'Bhang' is excluded from the definition of cannabis (hemp) under the N.D.P.S. Act one of the species of cannabis plant, therefore, its cultivation is not an offence and it is not punishable under Section 20(b)(i) of the said Act.

14. In my considered opinion cultivation of 'Bhang' is punishable under N.D.P.S. Act although it is not included within the definition of cannabis (Hemp) and not under Act No. 2 of 1950 within the meaning of Article 254 of the Constitution of India. As regards cultivation of Bhang is concerned, the N.D.P.S. Act would prevail over Act No. 2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by Parliament.

15. However, it is made clear that personal use and sale of Bhang is not an offence under Rule 24 of Rajasthan Narcotic Drugs and Psychotropic Rules, 1985. Since in the present case the question of possession and sale of Bhang is not involved, therefore, it is left open to be decided in a appropriate case.

16. With the aforesaid introspection now I propose to decide the present bail application on merits where accused applicant has been charge sheeted for cultivating cannabis plants under Section 8 read with Section 20 of the N.D.P.S. Act which is punishable under the said Act as discussed above.

17. The expression 'cultivate' has not been defined under N.D.P.S. Act, therefore, it must be construed in its popular sense as if it is a word of daily use by a common man. According to me popular sense also conveyed that sense which people con versant with that subject matter with which the statute is dealing may attribute to it. I am also of the opinion that in such a situation it would be safest course to adopt the literal dictionary meaning of such expression used by legislature in an enactment having penal consequences.

18. According to New Lexicon Webster's Dictionary Encyclopedic 1988 Edition page 235 the word 'cultivate' means to prepare (land) for crops. till or to raise

(crops) by fanning or gardening etc. Other meanings given in the said dictionary are not relevant for just decision of the present case, therefore, omitted.

19. According to the Chambers English Dictionary published in India in 1989 page 346, the word 'cultivate' means to fill or produce by tillage, to prepare for crops. Rest of the meanings given in the aforesaid dictionary are not relevant, hence, omitted.

20. From the aforesaid dictionary meaning of word 'cultivate', I am of the opinion that 'expression 'cultivate any Cannabis plant' used under Section 20(a) of the N.D.P.S. Act means conscious cultivation. In my considered opinion, the aforementioned expression cannot be extended to these cannabis plants, which are growing by natural process being watered by rains and lighted by sun un-noticed by an accused.

21. In the present case, a careful scrutiny of the challan reveals that none of the witnesses cited in the charge-sheet have been seen the accused-appellant sowing, weeding, watering and giving care and attention for protection of the cannabis plants in question. It is not possible in the present case also to infer or together from attending circumstances that the accused- applicant was giving any careful attention to protect the cannabis plants in question.

22. There is presumption of honesty and integrity of a man, therefore, a man cannot be presumed to be a criminal by necessary implication. Unless the guilt of accused-applicant by consciously cultivating cannabis plants in question is prima facie shown or proved by attributing some overt act to him by prosecution agency at the stage of granting bail, it would be presumed that the alleged cannabis plants were of small growth and these unwanted self-grown cannabis plants were growing in his field of 'Mirch' un-noticed by him.

23. My aforesaid belief is further strengthened by the fact that even according to the S.H.O. Sarada, who seized the alleged cannabis plants and expected to have a long experience in detecting and recognising the cannabis plants alleged these cannabis plants to be 'Ganja' which is contradicted by F.S.L. report. According to the FSL report 'Ganja' could not be detected in the sample sent to public analyst at

the time of chemical and microscopic examination.

24. Therefore, keeping in view, all the facts and circumstances of the present case as also the provisions of Section 37 of the N.D.P.S. Act, I feel that it will be just and proper to enlarge accused applicant Manjee son of Shri Hemaji on bail provided he furnishes a personal bond in the sum of Rs. 10,000/- (Rupees ten thousand only) and two sureties of the like amount, to the satisfaction of the learned District and Sessions Judge, Udaipur empowered to exercise powers under the N.D.P.S. Act for his personal attendance before that court on each and every date of hearing till completion of trial.

25. The accused-applicant is also directed to give a written undertaking to learned District and Sessions Judge, Udaipur to the effect that he shall keep peace and be of good behaviour and shall not commit any offence punishable under the N.D.P.S. Act, while on bail.

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