IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 28TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO. 100864 OF 2025

BETWEEN:

ASIF,
S/O. MAZEEBREHMAN HUDED,
AGE. 29 YEARS,
OCC. COOLIE,
R/O. 2ND CROSS,
JANNAT NAGAR,
TQ AND DIST. DHARWAD.

…PETITIONER

(BY SRI. PUNEET I.BADIGER, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY PSI SUB URBAN,
TQ. AND DIST. DHARWAD,
R/BY ADDL. SPP,
HIGH COURT PREMISES,
DHARWAD-580011.

…RESPONDENT

(BY SRI. T.HANUMAREDDY, AGA)

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R HEMALATHA
Location: HIGH
COURT OF
KARNATAKA

THIS CRIMINAL PETITION IS FILED U/SE. 482 OF CR.P.C. (U/S. 528 OF BNSS, 2023) SEEKING TO, QUASH THE FIR IN CRIME NO. 72/2024 REGISTERED ON 10.04.2024 BY THE SUB-URBAN PS, DHARWAD AND THE ENTIRE PROCEEDINGS PENDING ON THE FILE PRL. CIVIL JUDGE AND PRL. JMFC COURT DHARWAD IN C.C.NO 3136/2024 FOR THE ALLEGED OFFENCES P/U/SEC. 20 (b) (II) (A) OF NDPS ACT.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioner, who is facing trial for the offences punishable under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances, Act, 1985, is before this Court, seeking to quash the impugned proceedings in C.C. No.3136/2024 pending on the file of the Principal Civil Judge and Principal JMFC, Dharwad.

2. The prosecution states that, on 10.04.2024, the Police Sub-Inspector received credible information that some unknown person was selling ganja in a public place near a sand mill in Kamalapur, Dharwad. The complainant along with his staff went to the spot and it was discovered that a person was standing near the stand mill and was selling 'ganja' and, in turn, was collecting money from the people. The petitioner/accused was apprehended and 'ganja' was recovered from the petitioner/accused. The total weight of 'ganja' including the flower, stem and leaves weighed 223 grams.

3. The learned counsel for the petitioner/accused submitted that the FSL Report is absolutely silent about the percentage of Tetrahydrocannabinol, Cannabinol and Cannabidiol, and therefore, the prosecution has failed to establish that the petitioner has committed the offences alleged against him. In support of his contention, reliance is placed on the decision of High Court of Madhya Pradesh at Jabalpur, rendered in the case of **Dayaram Singh and Anr. v. State of Madhya Pradesh, Through**

Excise Inspection Zone, Amarpatan District, in Misc. Criminal Case No.7965/2011, DD 04.03.2024.

4. In response, the learned Additional Government Advocate for the respondent-State argued that, admittedly, the 'ganja' was recovered from the petitioner/accused. He further submits that, although the FSL Report is silent about the percentage of the ingredients, however, the presence of the ingredients is not ruled out and therefore, the contentions raised by the petitioner's counsel can be considered only at the time of the trial and not at this stage and, as such, sought for dismissal of the petition.

5. Heard the learned counsel for the petitioner and the learned Additional Government Advocate for the respondent-State.

6. The Regional Forensic Science Laboratory, Gokul Road, Hubballi has issued a Test Report dated 13.06.2024, which forms part of the charge sheet. A perusal of the FSL Report indicates that the weight of the sample recorded in Article 1 before examination was 247.96 grams and after examination, it is 236.94 grams (weight of the sample recorded with cloth packet).

7. In similar circumstances, the High Court of Madhya Pradesh at Jabalpur in **Dayaram Singh and Anr. v. State of Madhya Pradesh, Thr. Excise Inspection Zone, Amarpatan, District Satna in Misc. Criminal Case No.7965/2011, DD 04.03.2024**, observed as follows:

"9. The alleged contraband recovered from the petitioners finds place at Sl.No.55 of the table, wherein 1000 gms. would fall under small quantity and commercial quantity starts from 20 kg onwards. After filing of the charge sheet/173 of Cr.P.C., the ingredients of the FSL report cannot be improved. The FSL report is discrepant with regard to presence of tetrahydrocannabinol in any manner. The sample stuff can only be categorized as Ganja, if percentage of tetrahydrocannabinol is found to be 25%.

10. In view of the law laid down by the Division Bench of the Himachal Pradesh High Court in Nagendra Shah's case (supra) and other precedents on the subject, I am of the view that further prosecution in the aforesaid criminal case would result in futility, as the sample stuff cannot be categorized as Ganja on the basis of chemical analysis. The sample stuff has been categorized as Ganja solely on the basis of FSL report, which is discrepant in terms of percentage of tetrahydrocannabinol, rather cannabinol as a component in the sample stuff has not been mentioned in the FSL report. The FSL report has only indicated that some greenish, whitish coloured leaves and flowers were found in the sample stuff and on the basis of some chemical analysis and thin layer chromatography, sample stuff was categorized to be Ganja. In the aforesaid test, tetrahydrocannabinol was not found as a component contributing any required percentage in order to bring the sample stuff within the four corner of Ganja."

8. The legal principles established in the aforesaid decision in the case of *Dayaram Singh (supra)* is squarely applicable to the fact of the case since the percentage of tetrahydrocannabinol is not forthcoming in the FSL Report, and it can be categorized as 'Ganja' only if the said ingredients is 25% and above.

9. Therefore, in the absence of any material to establish that the petitioner/accused was in possession of 'Ganja', the

prosecution of the petitioner/accused for the aforesaid offence would be an abuse of process of law.

10. Accordingly, I pass the following:

ORDER

i) The petition is allowed.

ii) The impugned proceedings in C.C. No.3136/2024 pending on the file of the Principal Civil Judge & Principal JMFC, Dharwad, insofar as it relates to petitioner/accused, is hereby quashed.

Pending I.As., if any, do not survive for consideration and are disposed of accordingly.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE

KMS
Ct:vh
List No.: 1 Sl No.: 18