

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.32 OF 2022

Between:

Chamakuri Madhavi & other

... Appellants/A1 and A2

And

The State of Telangana,
Rep. by its Public Prosecutor ,
High Court for the State of Telangana,
Hyderabad.

...Complainant/Respondent

DATE OF JUDGMENT PRONOUNCED : 11.09.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 32 of 2022

% Dated 11.09.2023

Chamakuri Madhavi & other

... Appellants/A1 and A2

And

\$ The State of Telangana,
Rep. by its Public Prosecutor ,
High Court for the State of Telangana,
Hyderabad.

... Complainant/Respondent

! Counsel for the Petitioner: Sri V. Brahamaiah Chowdary

^ Counsel for the Respondents: Sri Public Prosecutor

>HEAD NOTE:

? Cases referred

1. (2016) 3 SCC 379
2. 2023 Law Suit (SC) 695

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 32 OF 2022****JUDGMENT:**

This appeal is filed by the appellants/A1 and A2, questioning the conviction recorded by the Special Sessions Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances Act, 1985-cum-I Additional Sessions Judge, Khammam, in SC.NDPS.No.8 of 2019, dated 17.01.2022, convicting the appellants to undergo Rigorous Imprisonment for a period of ten years each and to pay fine of Rs.1 lakh each for the offence under Section 20(b) r/w.8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Heard. Perused the record.

3. The appellants/A1 & A2 were convicted for the reason of being in possession of 3.5 Kgs. of ganja.

4. Briefly, the case of the prosecution is that on 21.08.2018 when the Sub-Inspector of Police, Khammam-I Town along with his staff went to platform No.1 of RTC Bus stand, Khammam, found the accused in suspicious circumstances. According to the prosecution, they have seized 3.5 Kgs. of ganja. Having

followed the procedure, they were arrested and sent to remand. Having concluded the investigation, charge sheet was filed against the appellants for the offences punishable under Section 20(b) r/w.8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

5. Learned Counsel appearing for the appellants would submit that the entire prosecution is bad in law for the reason of the Police not following the directions of the Honourable Supreme Court in ***Union of India v. Mohanlal***¹. By virtue of the said Judgment of the Honourable Supreme Court, sampling had to be done in the presence of Magistrate. However, in the present case, samples were drawn by the Investigating Officer-PW6.

6. PW3 is the mediator and PW5 is the Tahasildar who stated that sampling was done by the Police. PW6-Inspector of Police stated that the samples were sent to FSL by him.

7. Learned Assistant Public Prosecutor does not dispute the fact that the samples were taken by the Police and sent for FSL

¹ (2016) 3 SCC 379

examination. However, the procedure prescribed has been followed for which reason conviction cannot be set aside.

8. The Honourable Supreme Court in ***Mohanlal's case*** (*supra*) held as follows;

“15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of section-52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-

sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

9. The Honourable Supreme Court in ***Mangilal v. State of Mahdya Pradesh***² and in CrI.A.No.1443 of 2023 (Arising out of SLP (CrI.) No.1958 of 2023) decided on 09.05.2023 have followed the law laid down by the Honourable Supreme Court in ***Mohanlals’ case*** and for not drawing samples in presence of the Magistrate, recorded acquittal.

10. In the present case, admittedly, the samples were drawn by the Police and sent to FSL which is in violation of the procedure laid down by the Honourable Supreme Court in ***Mohanlal’s case***. In the said circumstances, the case of the prosecution cannot be relied upon to maintain the conviction. The case is not free from reasonable doubt and accordingly benefit has to be extended to the appellant.

11. Accordingly, the Criminal Appeal is allowed and the conviction recorded by the Special Sessions Judge for Trial of Cases under the Narcotic Drugs and Psychotropic Substances

² 2023 Law Suit (SC) 695

Act, 1985-cum-I Additional Sessions Judge, Khammam, in SC.NDPS.No.8 of 2019, dated 17.01.2022, is hereby set aside.

Miscellaneous applications, if any pending, shall stand closed.

K.SURENDER,J

Date: 11.03.2023

Note: L.R. copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 32 OF 2002
Dt. 11.09.2023

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