

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 844 OF 2020**  
**(Arising out of SLP (Cr1.) No. 3544 of 2020)**

**MUSHAQUE AHAMMED @ MUTHU & ANR.**

**Appellant(s)**

**VERSUS**

**THE SUB INSPECTOR OF POLICE & ANR.**

**Respondent(s)**

**O R D E R**

Leave granted.

The appellants are convicted under Section 20(b) (ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act' for brevity) and sentenced to imprisonment for 12 years and they were directed to pay a fine of Rs.1 lakh. The High Court upheld the conviction and sentenced the first appellant to 10 years and the second appellant to 5 years and reduced the fine to Rs.50,000/-.

Ganja was seized from a car at 13:25 hrs on 19.06.2018 by the Inspector of Police. The quantity of Ganja seized from the exclusive possession of the first appellant is 20.500 kilograms and 18.500 kilograms from the possession of the second appellant.

Mr. Ragenth Basant, learned counsel appearing for the appellants, submitted that the Ganja was found in 10 bags and samples have not been taken from each bag, which is in violation of Section 52-B of the NDPS Act. He made a reference to the judgment of this Court reported in *Gaunter Edwin Kircher v. State of Goa, Secretariat Panaji, Goa* (1993) 3 SCC 145, *Union of India v. Mohanlal and Another* (2016) 3 SCC 379, apart from the decision of the Delhi High Court reported in *Basant Rai v. State* (2012) SCC Online Del 3319 to argue that it is mandatory for samples to be drawn from the packets separately.

The point argued by Mr. Basant has not been raised before the Courts below. The appellants have not even made a suggestion in their cross examination of the witnesses about some of the bags not containing ganja. The High Court found that the charge of conspiracy between the first and the second appellant was not made out. The Court also found that the second appellant was in possession of intermediate quantity of Ganja and not commercial quantity and reduced the sentence to five years.

After carefully considering the entire material on record and the submissions of Mr. Basant we are of the

view that the judgment of the High Court does not warrant interference. The appeal is dismissed.

....., J.  
[ L. NAGESWARA RAO ]

....., J.  
[ HEMANT GUPTA ]

....., J.  
[ AJAY RASTOGI ]

New Delhi;  
December 09, 2020.

ITEM NO.5 Court 5 (Video Conferencing) SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No. 3544/2020  
(Arising out of impugned final judgment and order dated 21-05-2020 in CRLA No. 30/2020 passed by the High Court of Kerala at Ernakulam)

MUSHAQUE AHAMMED @ MUTHU & ANR. Petitioner(s)

VERSUS

THE SUB INSPECTOR OF POLICE & ANR. Respondent(s)  
(FOR ADMISSION and I.R. and IA No.72378/2020-EXEMPTION FROM  
FILING C/C OF THE IMPUGNED JUDGMENT and IA No.72379/2020-  
EXEMPTION FROM FILING O.T. and IA No.72380/2020-EXEMPTION FROM  
FILING AFFIDAVIT)

Date : 09-12-2020

This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Raghenth Basant, Adv.  
Mr. M. F. Philip, Adv.  
Ms. Mahamaya Chaterjee, Adv.  
Ms. Sonali Jain, Adv.  
Ms. Liz Mathew, AOR

For Respondent(s) Ms. Priyanka Prakash, Adv.  
Ms. Beena Prakash, Adv.  
Mr. G. Prakash, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.  
The appeal is dismissed in terms of the signed  
order.  
Pending applications stand disposed of.

(NIDHI AHUJA)  
AR-cum-PS

(ANAND PRAKASH)  
BRANCH OFFICER

[Signed order is placed on the file.]