

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A(J)No.19 of 2023

1. Sri Amar Singh,

Son of Sri Sanjoy Singh,
Resident of Haripur Colony,
Dighat Ghat, Dhibra Par,
Dinapur-cum-Khanga,
Patna, Bihar-800011

2. Shri Umesh Kumar Yadav,

Son of Chhotelal Yadav,
Resident of 42, Patna Line, Gwala Basti,
Bhuyadih, Jamshedpur, Agrico,
East Singhbhum Agrico, Jharkhand,
(Permanent) & Haripur Colony, Dighat Ghat,
Dhibra Par, Dinapur-cum-Khanga,
Patna, Bihar-800011

----- **Appellant(s)**

Versus

The State of Tripura

Represented by the Secretary,
Department of Home,
New Capital Complex, P.S. N.C.C.
Agartala, West Tripura

-----**Respondent(s)**

For Appellant(s) : Mr. D. Datta, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.

Date of Hearing and
date of delivery of
Judgment and Order : 16.07.2024

Whether fit for
Reporting : NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

[Amarnath Goud, J]

The present appeal is directed against the judgment and order of conviction and sentence dated 21.01.2023 passed by Learned Special Judge, Dhalai Judicial District,

Ambassa in connection with case No.Special (NDPS) 07 of 2022 whereby and whereunder the convicts have been sentenced to suffer RI for ten years each for the commission of offence punishable under Section 20(b)(ii)(C) of NDPS Act, 1985 and also to pay a fine of Rs.1,00,000/- each in default of payment of such fine with a direction to suffer further RI for a period of one year and for the commission of offence punishable under Section 25 of the NDPS Act the appellants were sentenced to suffer further RI for ten years each and to pay fine of Rs.1,00,000/- each and for default of payment of fine to suffer further RI for a period of one year each and furthermore the appellants were further sentenced to suffer RI for ten years each for the commission of offence punishable under Section 27 A of the NDPS Act and to pay a fine of Rs.1,00,000/- each in default of payment of fine they were sentenced to suffer further RI for a period of one year each and also the appellant-convicts were sentenced to suffer RI for ten years each for the commission of offence punishable under Section 29 of NDPS Act and to pay fine of Rs.1,00,000/- each in default of payment of fine they were sentenced to suffer further RI for a further period of one year each with direction that all the sentences shall run concurrently.

02. The case in brief is that on 30.12.2021 Sub-Inspector Bikash Debbarma of Ambassa Traffic Unit lodged one suo-motu complaint to the Officer-in-charge of Ambassa Police Station alleging, inter alia, that on

30.12.2021 at about 0840 hours when the complainant along with staff of Ambassa Traffic Unit and staff of Ambassa Police Station accompanied by 140 BN CRPF were performing vehicle checking duty at Kathalbari area on NH-08 vide Ambassa Traffic Unit GDE No.02. That time i.e. at about 0905 hours they stopped one vehicle bearing registration No.NL-01-Q-7635 and found that the movement of driver and khalasi of the vehicle were suspicious and on interrogation they informed that the vehicle contained some contraband items which were kept in the hidden chamber of the vehicle. Thereafter, the complainant informed the matter to Superintendent of Police, Dhalai, Dy. SP, Dhalai Traffic Unit and Officer-in-charge of Ambassa Police Station and accordingly, Dy. SP, Dhalai Traffic Unit and Officer-in-charge of Ambassa Police Station rushed to the spot with investigation kit including weighing machine and drug testing kit. The complainant also sent a message to Superintendent of Police, Dhalai seeking permission to conduct search in the vehicle and in the meantime some local people residing near NH-08 of Kathalbari came to the spot. Thereafter, the complainant and his accompanied staff got themselves their body searched and thereby, the complainant prepared pre-search memo in presence of witnesses and receiving permission from Superintendent of Police, Dhalai for conducting search in the vehicle, the complainant conducted search in the vehicle in presence of Dy. Sp, Dhalai Traffic Unit and independent witnesses.

During search total 121 nos. of brown colour packets tightly wrapped with cell tap containing ganja were recovered from the hidden chamber of the vehicle and on weighing found 1231.370 kgs of ganja. Thereafter, the complainant seized the recovered ganja along with vehicle bearing registration No.NL-01Q-7635 and its documents under a proper seizure list in presence of witnesses and thus, the complainant arrested the accused persons. After that, complainant removed all the seized articles and accused persons to the Ambassa Police Station and after returning to police station lodged a suo-motu complaint against the accused persons namely, Amar Singh and Umesh Kumar Yadav and handed over the seized articles to the In-charge of Ambassa Police Station. Accordingly, as per direction of In-charge, Ambassa PS the complainant kept the seized articles to the Malkhana of Ambassa PS vide MR No.27, dated 30.12.2021.

03. Thereafter the case was registered and the I.O. took up investigation of the case and during investigation the I.O. did all the formalities as required by law and after completion of investigation laid chargesheet against both the appellants convicted before the Learned Trial court. Before the trial court formal charge under Section 20(b)(ii)(C)/25/27 A/29 of NDPS Act was framed against both the appellants and the same were explained to them to which they pleaded not guilty and claimed to be tried. During trial to substantiate the charge prosecution adduced in total 10 numbers of witnesses and relied upon some

documentary evidences which were marked as exhibits in this case and after that on hearing of arguments of both the sides the Learned court below convicted both the appellants for the charges framed against them.

04. In course of hearing of argument Learned counsel for the appellant drawn the attention of this court that the prosecution could not adduce any cogent evidence on record to sustain the charge against the appellant. Furthermore, the requirement of Section 41 and 42 of NDPS Act were not complied with by the prosecution to substantiate the charge against the appellants and more so, the independent witnesses of the prosecution could not say as to how the seized alamats were identified as ganja for which the prosecution case was suffered from infirmities and Learned counsel referring the evidence of PWs 8 and 9 drawn the attention of this court that no pre-search memo was prepared, even the search memo was prepared later on which creates a doubt about the prosecution story and the alamats were not seized in presence of any gazette officer. So in summing up Learned counsel for the appellants submitted that since the evidence of prosecution suffers from various infirmities and the prosecution has failed to satisfy the requirements of law to sustain conviction against the appellants. So Learned counsel urged for allowing this appeal by setting aside the judgment of the learned court below.

05. On the contrary, Learned PP representing the prosecution submitted that in this case the prosecution has been able to prove the charge levelled against the appellants and referring the evidence of PWs 1, 2, 7, 8 and 9 Learned PP submitted that the evidence of those witnesses were so trustworthy that there was no room to disbelieve their evidence and furthermore referring the evidence of PW-5 Laxman Reang and PW-6 Kripajoy Reang the independent seizure list witnesses Learned PP drawn the attention of this court that the search and seizure was made as per law and the appellants by the trend of cross-examination could not raise any circumstance to disbelieve the evidence of those independent public witnesses and other witnesses of the prosecution. Learned PP further submitted that since during vehicle checking duty the offending vehicle along with the appellants were detained so there was no requirement to obtain prior permission of the authority as required by law and finally Learned PP urged for dismissal of the appeal and to uphold the judgment and sentence of the Learned court below.

06. Now before coming to the conclusion let us discuss about the substantial part of the evidence on record of the prosecution. PW-1 Shri Ranjit Reang deposed that on 30.12.2021 at about 09.00 AM while some police personnel accompanied by traffic unit of Ambassa and CRPF personnel conducting random vehicle checking on National Highway No.8 at Kathalbari stopped a container Truck bearing No.NL-

01-Q-7635 and while checking the documents of the vehicle suspicion arose to the police personnel as the driver and Khalashi were spoken to the police personnel in some irrelevant ways. On suspicion the driver and Khalashi were detained by police and they disclosed their identity that they were Amar Singh and Umesh Kumar Yadav. He also stated that he himself and others called to witness the search of the container truck and subsequently. The police personnel after observing all the formalities conducted search in the container truck in our presence and our signatures were taken. After that upon search of the container truck from a secret cabin of the truck 121 bundles wrapped with brown cellotape were recovered and the bundles were containing dry ganja. He said that Police seized those dry ganja in their presence and he identified his signature on the seizure list marked as Exbt.P-1/1. He further stated that Police also seized the documents of the vehicle inclusive of Aadhaar cards of the accused persons along with their Android and keypad mobile and marked his signature marked as Exbt.P-2/1. He identified the accused persons in the court.

During cross-examination he stated that police recorded his statement on the spot and also stated that the bundles were not opened by the police on the spot. In WV he stated that during unloading of the bundles some of them were torned and it could be ascertained that the bundles were containing dry ganja and smell of dry ganja were coming out of the bundles during unloading.

07. PW-2 deposed that on 30.12.2021 at about 11.30 a container truck was detained by us at Kathalbari on National Highway No.8 while performing regular vehicle checking duty with Sub-Inspector Bikash Debbarma and other police personnel. He stated that on the said date upon search of the vehicle bearing NO.NL-01-Q-7635 his officer recovered 121 bundles of dry ganja in presence of the witnesses. He identified his signature on the seizure list marked as Exbt.P-1/2. He further stated that the drivers were Amar Singh and Umesh Kumar Yadav and they failed to show any document with regard to the possession of the contraband in their vehicle and accordingly they were detained and arrested. He also stated that his officer seized the Aadhaar Card, driving licence and other documents of the vehicle along with one android mobile and a keypad mobile besides the vehicle bearing No.NL-01-Q-7635 were seized in their presence and he identified his signature on the seizure list marked as Exbt.P-2/2. Nothing came out relevant during the cross-examination.

08. PW-5 Shri Laxman Reang deposed that on 30.12.2021 at about 09.00 am while some Police personnel accompanied by Traffic Unit of Ambassa and CRPF Personnel conducting random vehicle checking on National Highway No.8 at Kathalbari stopped a container truck bearing No.NL-01-Q-7635 and while checking the documents of the vehicle suspicion arose to the Police personnel as the driver and khalashi were spoken to the Police personnel in some

irrelevant ways and on suspicion the driver and khalashi were detained by Police and they disclosed their identity that they were Shri Amar Singh and Shari Umesh Kumar Yadav. He himself and others called to witness the search of the container truck and before conducting search the Police personnel get themselves searched by them in presence of others on the spot and Police took his signatures on pre-search memo and search memo. He identified his signature on the pre-search memo marked as Exbt.P-3/1 and on search memo marked as Exbt.P-4/1. He further stated that upon search of the container truck from a secret cabin of the truck behind the driver's cabin 121 bundles of dry ganja wrapped with brown cellotape were recovered and those were unloaded in their presence and as the driver and khalashi failed to give any satisfactory explanation recovered bundles of dry ganja were seized by Police. He stated that Police also seized the driving licence of the accused persons besides other documents of the vehicle inclusive of their android mobile handsets. He identified the accused persons in the dock. Nothing came out relevant during the cross-examination.

09. PW-6 also deposed in the same manner like PW-5.

10. PW-7 deposed that on 30.12.2021 he had been reported that a container truck bearing No.NL-01-Q-7635 was detained while some Police personnel accompanied by Traffic unit of Ambassa and CRPF personnel conducting

random vehicle checking on National Highway No.8 at Kathalbari. He had also been informed while the Police personnel checking the documents of the vehicle suspicion arose to them as the driver and khalashi could disclose their name and they were making irrelevant statement. He stated that he had been informed by Sub-Inspector Shri Bikash Debbarma and within fifteen minutes he reached at the place of occurrence and Sub-Inspector Shri Bikash Debbarma conducted search in the vehicle after observing all the formalities and accordingly he prepared search memo of the vehicle and the pre-search memo on the spot and his signatures were obtained and identified his signatures as Exbt.P-3/3 and Exbt.P-4/3. He further stated that upon search of the container truck from a secret cabin of the truck 121 bundles wrapped with brown cellotape were recovered those were seized by Sub-Inspector Shri Bikash Debbarma in his presence and he identified his signature marked as Exbt.P-1/4. He stated that Sub-Inspector Shri Bikash Debbarma also seized the Aadhaar Cards of the driver and khalashi, their driving licence and other documents of the vehicle along with one Android mobile and a keypad mobile besides the vehicle bearing No.NL-01-Q-7635 were seized in his presence and he identified his signature as Exbt.P-2/4. He identified the accused persons in the court dock. Nothing came out relevant from the cross-examination.

11. PW-8, Bikash Debbarma deposed that on 30.12.2021 he was posted as Sub-Inspector of Police of Ambassa Traffic Unit and on that day in the morning at about 08:40 hours while he himself and along with his staff of Ambassa Traffic Unit accompanied by the CRPF personnel of 140 BN. CRPF were performing vehicle mobile checking duty at Kathalbari on National Highway No.8 vide Ambassa Traffic Unit GD Entry No.02 they stopped a container truck vehicle bearing registration No. NL-01-Q-7635 and asked the driver and his co-driver to produce the relevant document of the vehicle they produced the document of their vehicle but they were in hesitation. Thereafter, on suspicion he talked with them and during enquiry the driver and the co-driver stated to him that the vehicle contained some illegal substances and those were concealed inside the vehicle in a hidden chamber. He further stated that they placed the vehicle besides the road and informed the matter to SP, Dhalai as well as Dy. SP, Traffic Unit, Dhalai namely Sunil Murasing and immediately Sunil Murasing rushed to the spot and he sent a message to SP(C/S), Dhalai seeking permission to conduct search in the vehicle. In the meantime independent witnesses arrived on the spot and they offered themselves to be searched by the independent witnesses and he prepared pre-search memo on the spot in the presence of the witnesses and he identified his signature marked as Exbt.P-3 and ExbtP-3/4. He also conducted search of the said vehicle and prepared search memo in

presence of Dy. SP, Traffic Unit and independent witnesses and he identified his signature marked as Exbt.P-4 and Exbt.P-4/4. He stated that upon search of the vehicle 121 bundles of dry ganja wrapped with brown cellotape which were found concealed inside a chamber of the container truck and accordingly he seized those contraband under a proper seizure list in presence of the witnesses and he identified his signatures on the seizure list marked as Exbt.P/1 and Exbt.P-1/5. He also seized some documents and identified his signatures marked as Exbt.P-2 and Exbt.P-2/5. Further he stated that he arrested the accused persons and thereafter he removed the accused persons along with the seized materials and contraband to the police station and lodged suo-motu complaint. He identified the suo-motu complaint petition marked as Exbt.P-5 and Exbt.P-5/1.

During the cross-examination he stated that he did not apply any Test Kit on the spot to ascertain whether the bundles recovered from the truck were containing any illegal substances or not. Nothing more came out relevant during the cross-examination.

12. PW-9 deposed that on 30.12.2021 he was posted as Sub-Inspector of Police of Ambassa Police Station. He stated that on that day Inspector Parikshit Debbarma being the Officer-in-Charge of Ambassa Police station upon receipt of the written ejahar of Sub-Inspector Bikash Debbarma registered Ambassa police station Case No.2021 ABS 67

under Sections 20(b)(ii)(C)/25/29/27(a) of the NDPS Act, 1985. He identified his signature on the registration endorsement marked as Exbt.P-5/2 and also in the printed FIR marked as Exbt.P-6 and Exbt.P-6/1. He stated that during investigation he visited the place of occurrence and prepared hand sketch map and identified his signature marked as Exbt.P-7 and Psbt.P-8. He perused the suo-motu complaint, pre-search memo, search memo, seizure list, seizure memo and other documents in the case docket prepared by the complainant and thereafter he arrested the accused persons and also interrogated them and prepared interrogation reports. He also examined the available witnesses under Section 161 of Cr.P.C. Thereafter an inventory was prepared by the Dy. SP, Traffic namely Sunil Murasing on 31.12.2021 and he produced the inventory before the court and prayed to certify the correctness of the inventory. He further stated that upon completion of investigation being prima-facie satisfied he submitted charge-sheet against the accused persons for the commission of offences punishable under Sections 20(b)(ii)(C)/25/29/27 of the NDPS Act, 1985. He identified the accused persons in the court dock.

During cross-examination he stated that he made a prayer before the Ld. CJM, Dhalai Judicial District, Ambassa for drawing sample from the seized contraband and he did not make any prayer before the Special Court for certification of correctness of the inventory, drawing of

samples, photography of the sampling procedure etc. He also stated that he did not seize the Malkhana voucher and or godown receipt relating to the interim custody of the seized narcotic drugs and the samples during his period of investigation. He further stated that samples were drawn by the Dy. Sp Sunil Murasing at Khathalbari on National Highway No.8 under Ambassa police station, Dhalai. He also stated that being the investigating Officer he did not prepare any list of sample before the court during sampling and he did not prepare any check-list in the instant case during his investigation and he did not complete Section 172(1)(1A) of Cr.P.C. relating to the examination of witnesses and recording their statements.

Heard both sides.

13. We have gone through the evidence on record. Nor for the sake of convenience we would like to refer herein below the relevant provisions of Section 41 and 42 of NDPS Act which are as follows:

"41. Power to issue warrant and authorisation.—

(1)A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second-class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

(2)Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed forces as is

empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

[42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.]”

14. After going through the evidence on record and also after perusing the aforesaid provision of law it appears that on the alleged day in course of vehicle checking duty the contravenes were seized from the position of the appellants by the informant and the same was seized in presence of the independent public witnesses and after going through the evidence on record it appears that the appellants by the trend of cross-examination could not raise any doubt to disbelieve the prosecution case and furthermore on perusal of the independent public witnesses and the evidence of PW-10 it appears that the seized alamats were contravened ganja and there was no room to disbelieve the evidence of prosecution regarding identification of the seized alamats. That apart the said seizure of vehicle & contraband was on the road in a running vehicle/crime vehicle. It is not a building or place or raid. In a routine check when police officers made an alert to stop the vehicle did not obey and thus seize & found contraband. It is also not a personal body check. Thus it

appears that the appellants have failed to satisfy the court by giving any cogent materials to interfere with the judgment delivered by the learned Trial court below showing their innocence with the alleged commission of offence. Hence the present appeal filed by the appellants is liable to be dismissed.

15. In the result, the appeal filed by the appellants stands dismissed. The judgment and order of conviction and sentence imposed by Learned Special Judge, Dhalai Judicial District, Ambassa in connection with case No.Special (NDPS) 07 of 2022 is hereby upheld and accordingly it is affirmed.

Send down the LCRs along with a copy of this order.

JUDGE

JUDGE



**MOUMITA
DATTA**

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