

GAHC010177132022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./229/2022

MUKUT DAS
S/O SRI NIRMAL DAS,
RESIDENT OF VILLAGE BHIMOR GAON, PS SAMAGURI, DIST NAGAON,
ASSAM 782141

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MS M D MEDHI

Advocate for the Respondent : MR. R J BARUAH(ADDL. PP)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 25-07-2024

Heard Mr. B.C. Das, learned counsel for the accused-appellant. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State/respondent.

2. This appeal is directed against the Judgment and order dated 15/06/2022 passed by the

learned Special Judge, NDPS, Karbi Anglong, Diphu in NDPS case No. 06/2014, whereby the accused/appellant was convicted u/s 20 (C) of NDPS Act, 1985 and sentenced him to undergo rigorous imprisonment for ten (10) years with fine of Rs. 1, 00,000/- in default RI for one year.

3. The prosecution case as revealed that on 12/02/2014, an FIR has been lodged at Bokajan Police Station stating inter alia that on that day at about 6 PM, the informant along with other police personnel conducted nakka checking duty at Bokajan C.C.I point over NH 39 near Bokajan police station. During the checking, at about 7 PM, one vehicle bearing No. AS12E5490 (truck) coming from Dimapur side towards Guwahati was intercepted. The accused/appellant was driving the said truck at the relevant time. During search of the vehicle, 672 kg of ganja was recovered which was duly seized as per seizure list in presence of the witnesses. Accordingly, the appellant was arrested.

4. On receipt of a complaint, a case was registered vide Bokajan PS case No. 21/2014 u/s 20 (C) of NDPS Act. And after completion of investigation, charge sheet was submitted against the accused/appellant under the aforesaid section of law. It is pertinent to say here that there was another accused in the instant case. As he was minor/juvenile at the relevant time, hence, the case against him was referred to the Juvenile Justice Board for trial.

5. During trial, charge was framed u/s 20 (C) of NDPS Act which was read over and explained to the appellant to which he pleaded not guilty and claimed to be tried. In the course of trial, the prosecution examined eight witnesses and exhibited 11 documents in support of the prosecution case. After closure of the trial, the statement of the appellant was recorded u/s 313 Cr.P.C. where he denied the allegations made against him and stated that he has been falsely implicated in this case. After hearing learned counsel for the parties and on perusal of the records and the documents available thereon, the appellant was convicted as aforesaid.

6. Being highly aggrieved and dissatisfied with the impugned Judgment and Order, the

appellant has preferred this appeal.

7. Learned counsel for the appellant has argued that the evidence of PWs 1, 3, 4, 5 and 6 are contradictory to each other and opposite to the evidence of the informant, PW2. PW3 and PW4 specifically stated in their evidence that they were on naka checking duty at Bokajan cement factory on the date of incident along with six other persons. On that day at about 7 PM, they stopped a truck bearing No. AS-12-E-5490 and checked the vehicle and suspected ganja was recovered. Thereafter, they informed the matter to their Departmental officer and subsequently to Bokajan police and thereafter, senior officer of Bokajan police station along with some other police personnel arrived at the spot.

8. According to the learned counsel for the appellant, PW2, the informant had completely given a different version of the case. According to him, on 12/02/2014 at about 6 PM he was deputed to Naka checking point near Bokajan cement factory along with a section of CRPF personnel for checking the vehicles. On that day at about 7 PM, he stopped and checked the truck AS-12-E-5490 coming from Dimapur side towards Guwahati driven by the present appellant and seized the suspected ganja weighing 672 Kgs. The learned counsel for the appellant has further submitted that the evidence of PW2 is contrary and opposite to PW1, 3 and 4. Therefore, the evidence of the PW2 is not at all reliable and believable.

9. It is further submitted that the evidence of PW1, 3 and 4, if believed, makes it mandatory on the part of the Bokajan PS to reduce the information into writing so received as per provision of Section 42 of NDPS Act. But there is no such recording of information received from CRPF Bokajan cement factory, which is clear violation of section 42 of NDPS Act, which vitiates the entire proceeding.

10. Further submission of the learned counsel for the appellant is that the appellant who is a driver by profession, on 12/02/2014, he carried some goods from Guwahati to Kohima and while returning back to Guwahati after delivering the goods at Kohima, some people loaded some packets containing chocolates in his truck and told him that those packets would be

received by their men at Guwahati and accordingly, he was paid Rs. 20,000/- for carrying those packets in his truck. Learned counsel for the appellant has further stated that the appellant has no knowledge that the packets contained contraband items. Accordingly, learned counsel for the appellant has prayed to set aside the conviction and sentence imposed against the appellant.

In support of his submission learned counsel has referred the following case laws –

- a. (1999) 6 SCC 172 (State of Punjab vs. Baldev Singh)
- b. AIR 2018 SC 3853 (Mohan Lal vs. State of Punjab)
- c. (2020) SCC Online SC 882 (Tofan Singh vs. State of Tamil Nadu)

11. On the other hand, learned Additional Public Prosecutor supported the Judgment passed by the learned Trial court and submitted that commercial quantity of ganja was recovered from the alleged vehicle which was driving by the appellant at the relevant time. It transpires that the alleged contraband was recovered from the conscious possession of the accused/appellant as such the Judgment and order passed by the trial court does not warrant any interference by this court.

12. Broadly speaking the impugned Judgment was challenged on the following grounds –

- a. No effort was intentionally made by SI Tinkumoni Bordoloi to join independent person in the investigation of the case.
- b. There is no eye witness or any public witness regarding the recovery of alleged contraband from the appellant which clearly casts a doubt on the prosecution version in submitting that the contraband was recovered from the possession of the appellant.

- c. Recovery was done in an open space near Bokajan cement factory which renders the application of section 42 NDPS as inapplicable. The prosecution has failed to provide any explanation as to why no warrant or authorization was issued before conducting the raid despite the fact that the high rank police officials were duly informed about the alleged incident.

13. I have given my conscious thoughts to the grounds urged in the appeal. I have also perused the record including the Judgment of the trial court.

14. On perusal of the evidence of the witnesses, it reveals that PW2, 3 and 4 were present at Bokajan cement factory during naka checking of the vehicles. According to them, on 12/04/2014 at about 7 PM they intercepted a truck bearing No. AS-12-E-5490 and during checking they found wood logs in the carrier of the truck and when they removed those logs, thirty two (32) packets of suspected ganja wrapped with polythene were detected. On receipt of the information, police personnel from Bokajan Police station arrived at the spot and unloaded the suspected ganja and weighed the same. After weighing the said suspected ganja, it was found totaling of 672 Kgs.

Though the witnesses were subjected to lengthy cross examination, but nothing could be elicited to discredit their testimonies.

15. Regarding non examination of independent witnesses, it is common experience that public persons are generally reluctant to join police proceedings for variety of reasons. Investigation itself is a tedious process and a public witness, who is associated, has to spend hours at the spot. Normally, nobody from public is prepared to suffer any inconvenience for the sake of society. The other reason for the public witness not readily agreeing to associate with investigation is harassment of public witness that takes place in the courts. Normally a public witness should be called once to depose in the court and his testimony should be recorded and he should be discharged. But experience shows that adjournments are given even in criminal cases on all excuses and if adjournments are not given, it is considered as a breach of the right of hearing of the accused. These adjournments are specifically taken by

counsels for accused persons, when witnesses are present, just to see that witnesses get harassed by calling them time and again. The excuses normally given in the courts are; the counsel having urgent personal work, left the court; death of some near relatives etc; the counsel being busy in arguing other matter in other court or cross examining other witness in some other court. This attitude of the courts of sending witness back is a major cause of harassment which discourages public from associating in the investigation of any case. Since the police is faced with this handicap, the police cannot be blamed for not associating public witness. There is no presumption that the police witnesses are not credible witnesses. The testimony of every witness, whether from public or police, has to be judged at its own merits and the court can believe or disbelieve a police witness considering the intrinsic value of his testimony. Police witnesses are equally good witnesses and equally bad witnesses as any other witness and the testimony of police witness cannot be rejected on the ground that they are official witnesses.

16. Presumption of honesty is as much available to a police officer which is available to any other official witness. There is no presumption that police officials are liars. The effect of non-joining of independent witness is only that the court has to view the submission of the police or other witnesses with caution and circumspection and the veracity of the same has to be decided before placing reliance upon them for arriving at any conclusion regarding the guilt of the accused.

17. In ***Ajmer Singh vs. State of Haryana***, reported in ***(2010) 3 SCC 746***, Hon'ble Supreme Court observed:

"16. The learned Counsel for the appellant has submitted that the evidence of the official witness cannot be relied upon as their testimony, has not been corroborated by any independent witness. We are unable to agree with the said submission of the learned Counsel. It is clear from the testimony of the prosecution witnesses PW-3 Paramjit Singh Ahalwat, D.S.P., Pehowa, PW-4 Raja Ram, Head Constable and PW-5 Maya Ram, which is on record, that efforts were made by the investigating party to include independent witness at the time of recovery, but none

was willing. It is true that a charge under the Act is serious and carries onerous consequences. The minimum sentence prescribed under the Act is imprisonment of 10 years and fine. In this situation, it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule. Therefore, in the peculiar circumstances of this case, we are satisfied that it would be travesty of justice, if the appellant is acquitted merely because no independent witness has been produced. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence. In the present case, both the trial court and the High Court by applying recognized principle of evaluation of evidence of witnesses has rightly come to the conclusion that the appellant was arrested and Charas was recovered from the possession of the appellant for which he had no licence. We find no good reason to differ from that finding."

18. Moreover, the Apex Court in ***P.P. Beeran vs. State of Kerala***, reported in **(2001) 9 SCC 571** has held that there is no mandatory requirement of having public witnesses in an NDPS case. The Supreme Court has further held that if the evidence of the Police Officer inspires confidence, then even if it is not corroborated by any other source, it can nonetheless be made sole basis for conviction.

19. Appreciating the evidence on record on the anvil of the aforesaid principles, there is no acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and trustworthy. The prosecution case cannot be disbelieved merely on the ground of non-joining of public witnesses if the deposition of the police witnesses are convincing and credible. A perusal of the testimony of the prosecution witnesses reveals that despite cross-examination, nothing material could be elicited to discredit their testimony. The appellant is

the resident of Village Bhimorgaon under Samaguri Police Station in the district of Nagaon, Assam and there would be no reason for the police officials to falsely implicate him in this case. Moreover, the accused person did not allege any animosity or grudge against any of the police officials for which he would be falsely implicated in this case.

20. Regarding non compliance of Section 42 of the NDPS Act, in the case in hand it is clear from the testimony of the prosecution witnesses and the evidence on record that the alleged vehicle was intercepted during naka checking near Bokajan cement factory and section 42 is not applicable in this case as the recovery was done in an open place. In the present case, Section 43, is applicable which reads as follows-

43. Power of seizure and arrest in public place.—

“Any officer of any of the departments mentioned in section 42 may —(a)seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation: — for the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

21. Section 43 NDPS Act nowhere states that a warrant or a authorization is required before search is done in an open place.

22. In **Ramesh Kumar Rajput @Khan v State, Crl.A.755/2004** decided on 2.05.2008, reported in **2008 SCC Online Del 1658**, it was held that:

*“As regards the argument that the requirement of Section 42 NDPS Act was not complied with since the secret information received on 15th January 2000 was not reduced to writing, the learned Counsel for the Respondent appears to be right that the applicable Section is Section 43 and not Section 42 since the search, arrest and seizure took place in a public place i.e. the roof of Palika Bazar car parking. Nevertheless the DD entry 21 (exhibit PW 12/A) and DD entry 29 (exhibit PW 12/D) show that the information received constitute sufficient compliance of reducing that information into writing. The decision in **Narayanaswami Ravishankar v. Asst. Directorate of Revenue Intelligence (2002) 8 SCC 7** applies on the facts of the present case. There the Court held :*

In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the Airport which is a public place. This being so, it is the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non- compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.”

23. It was explained in **Abdul Rashid Ibrahim Mansuri v. State of Gujarat** reported in **2000 0 AIR (SC) 821**, that the mandatory requirement of reducing the information to writing applied when the information is that the narcotic substance is kept or concealed in any building, conveyance or enclosed place. As far as the present case is concerned, the arrest, search and seizure having been made near Bokajan cement factory which is undoubtedly a public place, the requirement of Section 42 does not apply. Therefore, the contention of the appellants in this regard is rejected.

24. No other grounds were urged in the grounds of appeal.

25. After meticulous examining the entire material on record, the learned trial court has convicted the appellant u/s 20 (C) of NDPS Act, which does not call for any interference. Accordingly, the appeal is dismissed and disposed of. The trial court record be sent back.

JUDGE

Comparing Assistant