

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 32 of 2014

Against the judgment of conviction dated 16.12.2013 and order of sentence dated 23.12.2013 respectively passed by Sri Rajendra Pratap Singh, learned Additional Sessions Judge-1st-cum-Special Judge (N.D.P.S. Act), Gaya in N.D.P.S. Case No. 20 of 2010 arising out of Barachatti P.S. Case No. 08 of 2006

1. Vijay Yadav, Son of Late Jagdish Yadav, Resident of Village - Piprahi, Police Station - Barachatti, District - Gaya

.... Appellant

Versus

1. The State of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 56 of 2014

1. Raj Kumar Yadav, S/O Late Jagdish Yadav, Resident of Village - Piprahi, Police Station - Barachatti, District - Gaya

.... Appellant

Versus

1. The State of Bihar

.... Respondent

Appearance :

For the Appellants : Sri S.R.B. Sinha, Sr. Advocate
Sri Mrigendra Pratap Singh, Advocate (In both the Appeals)

For the Respondents : Sri S.N. Prasad, A.P.P. (In both the Appeals)

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

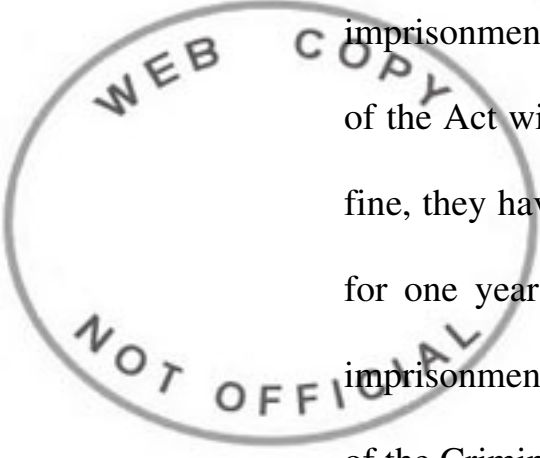
Date: 09-01-2014

Gopal Prasad, J.

Heard learned counsel for the appellants and learned

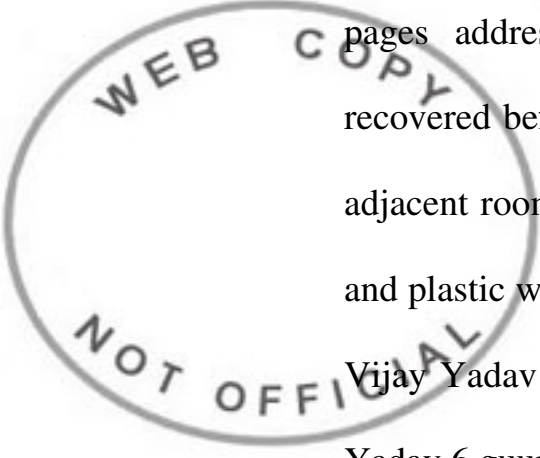
counsel for the State.

2. These two appeals have been heard together and are being disposed of by this common order. The appellants have been convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (for short “the Act”) and Section 17 of the Criminal



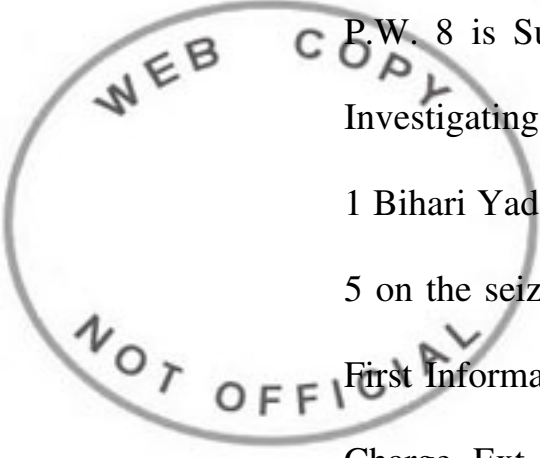
Law Amendment Act and sentenced them to undergo rigorous imprisonment for ten years for the offence committed under Section 20 of the Act with a fine of Rs.50,000/- each and in default of payment of fine, they have further been sentenced to undergo simple imprisonment for one year. They have further been sentenced to undergo rigorous imprisonment for one year for the offence committed under Section 17 of the Criminal Law Amendment Act with a fine of Rs.5,000/- each and in default of payment of fine they have further been sentenced to undergo simple imprisonment for six months. However, it has been ordered that all the sentenced shall run concurrently.

3. The prosecution case as alleged in the First Information Report by the informant Jagarnath Ray, Sub-Inspector, Barachatti Police Station is that on the direction of Senior Police Officer in the leadership of SDPO, Sherghati along with Officer-in-Charge, Dobhi, Officer-in-Charge, Sherghati and Officers of the C.R.P.F 36 and other Javans reached Barachatti and got secret information that in the house of Mukhiya Mahadeo Yadav of Bhalua Panchayat the extremist used to come and his brothers Shadeo Yadav and Raj Kumar Yadav are active members of the extremist group and they are smuggling Ganja. On the said information following the rule of seizure in presence of the two witnesses Baleshwar Yadav and Naresh Yadav searched the house of Mahadeo Yadav and recovered 6 big Jute



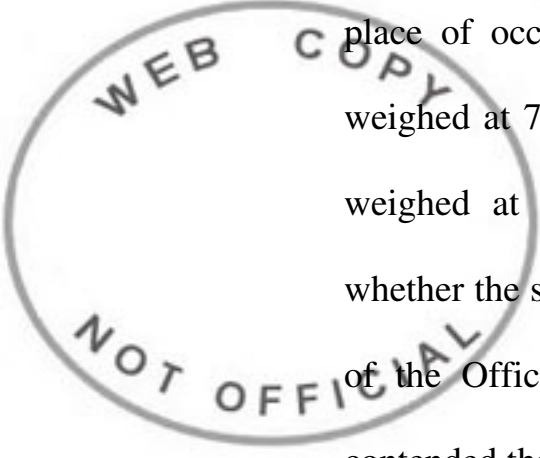
bag and 7 plastic bag containing Ganja and under his bed a letter of 5 pages addressing to comrade Rakesh was recovered. The Ganja recovered before the witnesses was found to be 105 Kgs. and from the adjacent room which is said to be of Sahdeo Yadav gunny bag of Jute and plastic were recovered containing 53 Kgs. Ganja. From the room of Vijay Yadav 5 bags were recovered and from the room of Raj Kumar Yadav 6 guuny bag was recovered containing 120 Kgs. of Ganja and on inquiry it was learnt that Mahadeo Mukhiya along with his brothers used to live jointly and got a house constructed at G.T. Road for the study of the children and thereafter the seizure list was prepared.

4. On the basis of the self statement of the informant First Information Report was lodged and investigation proceeded. After completion of investigation, charge-sheet was submitted for the offence under Section 20 of the Act and Section 17 of the Criminal Law Amendment Act on which cognizance was taken, case was committed to the Court of Sessions. During trial, nine witnesses were examined on behalf of the prosecution who are P.W. 1 Bidhan Chandra Lal is Police Inspector, Mahnar Police Station, P.W. 2 Ratnesh Kumar is Jamadar, the then Police Officer-in-Charge of Dobhi Police Station, P.W. 3 is Braj Kishore Mishra, the then S.I., Barachatti Police Station, P.W. 4 Baleshwar Yadav is a seizure list witness having turned hostile, P.W. 5 Jaggarnath Rai is the informant, P.W. 6 Priyabrat Yadav is the then S.I.

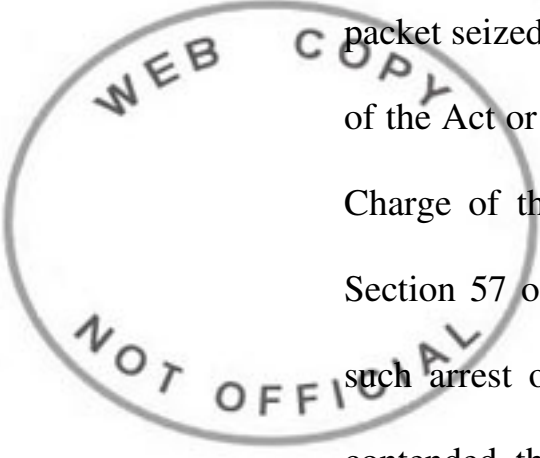


of Barachatti, P.W. 7 Shyamdeo Singh is the Investigating Officer, P.W. 8 is Suresh Razak and P.W. 9 Shiv Shanker Singh is another Investigating Officer. The defence has also adduced a witness i.e. D.W. 1 Bihari Yadav. Ext. 1 is the seizure list, Ext. 2 is the signature of P.W. 5 on the seizure list, Ext. 2/1 is the signature of P.W. 5 on the formal First Information Report, Ext. 3 is the self statement of the Officer-in-Charge, Ext. 4 is the charge-sheet and Ext. 5 is the report of FSL. The trial court taking into consideration the evidence of the witnesses adduced, convicted and sentenced the appellants as mentioned above.

5. Learned counsel for the appellants, however, contended that in the entire evidence no witness has stated that the police proceeded for seizure of the articles in the house of the appellants along with the independent witnesses and further one of the seizure list witness has turned hostile having not supported the prosecution case and the other witness has not been produced at all and hence, there is no independent witness to support the search and seizure. It has further been contended that the police on secret information proceeded for search and seizure but there is no compliance of Section 42 of the Act as neither the said information was recorded nor any information was given to the Superior Officer regarding the search and seizure. It has further been contended that there is variance in the evidence about the place where the articles were weighed as



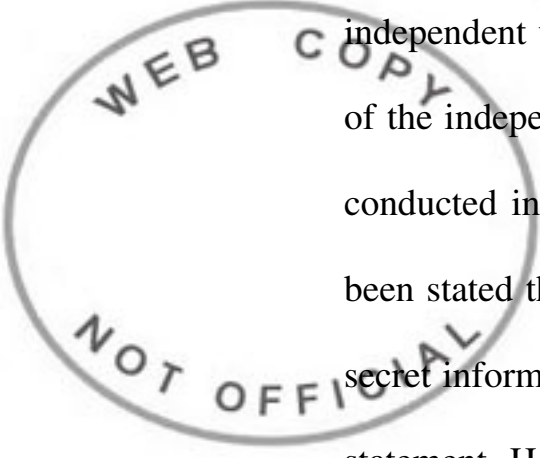
some of the witnesses have stated that the articles were weighed at the place of occurrence and sealed there, some have stated that it was weighed at 71 mile and some have stated that the seized articles were weighed at the police station. However, there is no mention that whether the seized articles were kept in the police station under the seal of the Officer-in-Charge of the Police Station. It has further been contended that there is no evidence at all that whether the articles seized were placed before the Magistrate in compliance of Section 52A of the Act nor there is any certificate of the Magistrate about the seized article and its specification. It has also been contended that as per Section 52-A(2) of the Act it was incumbent upon the prosecution party to prepare the inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs and psychotropic substances regarding the correctness of the inventory in presence of the Magistrate, photographs of such drugs and substances and certifying such photographs as true and further the representative samples of such drugs or substance, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn. It has further been contended that there is no evidence that who took the sample of the seized articles and who sent it to the FSL. There is neither mention whether the sample was taken



from each of the packets or the samples were taken from which of the packet seized and further there is non-compliance of Sections 55 and 57 of the Act or whether the seal on the seized articles is of the Officer-in-Charge of the Police Station and further there is non-compliance of Section 57 of the Act of making a full report of all the particulars of such arrest or seizure to his immediate Official Superior and hence, contended that the safeguards provided under the Act has not been complied with causing prejudice to the appellants.

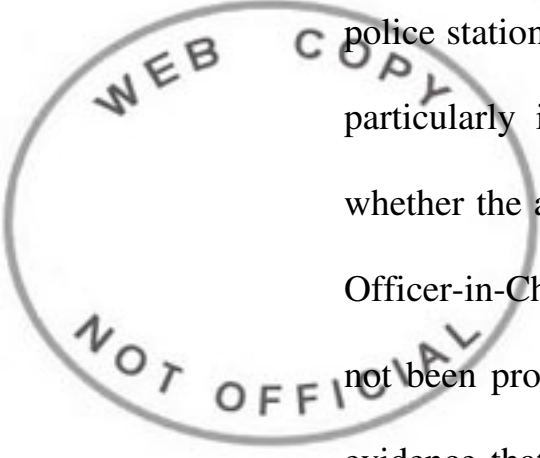
6. Learned counsel for the State, however, contended that it is true that the information received about the Ganja and the letter of extremist and then the police immediately rushed to the place of occurrence and so there was no opportunity to record the statement in the diary of the police station or complying Section 42 of the Act.

7. However, taking into consideration the respective submission and along with the evidence adduced, it is apparent that the witnesses have stated that P. Ws. 1, 2 and 3 have supported the prosecution case that after getting information they reached Piprahi village with the prosecution party and surrounded the house of Mahadeo Yadav, entered into the house and recovered 278 Kgs. Ganja from the different rooms of his house. P.W. 5 has stated specifically about the recovery of 105.500 Kgs., 53 Kgs. and 120 Kgs. Ganja from the different rooms in the house of Mahadeo Yadav. However, there is



no mention that the said recovery was made in presence of the two independent witnesses. The seizure list mentions the thumb impression of the independent witnesses but there is no evidence that the raid was conducted in presence of two independent witnesses. However, it has been stated that while they were on patrolling and proceeding they got secret information and in continuation it was not possible to record the statement. However, it is well settled in the decision reported in 2009 (4) PLJR 128 paragraph 17(b) where it has been held that compliance of Section 42 of the Act is mandatory that “if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per Clauses (a) to (d) to Section 42(1) thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the Official Superior”.

8. However, it was incumbent upon the prosecution party that after the raid having been conducted the Officer ought to have complied Section 42 of the Act just after the arrest or recovery and non-compliance of Section 42 of the Act itself shall be fatal. Though



the witnesses have stated that the articles seized were taken to the police station but there is no evidence that where the articles were kept particularly in the police station or not. There is no evidence that whether the articles were kept in the police station with the seal of the Officer-in-Charge of the police station. The Malkhana register has also not been produced to show where the articles were kept. There is no evidence that who took the sample and what was the mode of taking sample for sending it to the police station. There is no evidence that the sample was taken in presence of the Magistrate and neither there is compliance of Sections 52 of the Act nor Sections 55 and 57 of the Act. It is true that non-compliance of Sections 52, 55 and 57 of the Act is not mandatory but non-compliance of these provisions has great consequence for appreciation of the evidence regarding the search and seizure of the articles seized and has grave consequence.

9. Having regard to the fact that there is non-compliance of Sections 52A, 55, 57 and 42 of the Act and there is no evidence at all that who collected the sample and the manner of collecting the sample and sending it to the FSL casting a serious doubt about the report received without any evidence, serious prejudice has been caused to the accused as the safeguard provided under the Act have not been complied with and hence, the order of conviction and judgment of sentence recorded by the trial court is not sustainable in the

eye of law. Accordingly, the order of conviction recorded by the trial court is hereby set aside. The appellants are ordered to be acquitted of the charges levelled against them. The appeals are allowed. The appellants, who are in custody, be set at liberty forthwith, if not required to be detained in any other case.

(Gopal Prasad, J.)

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