

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.257 of 2015

Against the judgment of conviction dated 30.04.2015 and order of sentence dated 02.05.2015 passed by Shri Prabhakar Mishra, Additional Sessions Judge-III, West Champaran, Bettiah, in Sessions Trial No.9 of 2011 (arising out of Bhangaha P.S. Case No. 22 of 2010)

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Ram Pukar Ram, Son of Ram Chandra Ram R/o village - Murli Parariya, P.S. Shikarpur, District - West Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Ram Adya Singh, Advocate
Mr. Pramod Ranjan, Advocate.

For the Respondent : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 01-12-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of the judgment of conviction dated 30.04.2015 and order of sentence dated 02.05.2015 passed by Shri Prabhakar Mishra, Additional Sessions Judge-III, West Champaran, Bettiah, in Sessions Trial No.9 of 2011 (arising out of Bhangaha P.S. Case No. 22 of 2010) by which the appellant had been convicted for offence under 20 (ii)(b)c of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.1,00,000/-. Further convicted for offence under Section 22(c) of

N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.1,00,000/-. Further convicted for offence under Section 23 (c) of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 1,00,000/- and in default of payment of fine further sentenced to undergo simple imprisonment for two years. Further it has been ordered all the sentences shall run concurrently.

3. The prosecution case as alleged that while the informant Deputy Inspector K. H. Sonamani Singh was on patrolling duty along with Head Constable Pranab Indequ (P.W.4), Constable Mubapa H. Ram P.W.5, Constable Ataybir Singh P.W.2 and Constable Sheshmani Patel P.W. 6 reached border at Pillar no. 425/5, they got information that two persons trying to cross the border with some objectionable materials then the patrolling party asked to stop the motorcycle coming from Nepal at Pillar No. 423 but they did not stop and one Jawan chased and motorcycle overtake near Pillar No. 423 and asked to stop. The accused persons kick of motorcycle of the Jawan by which Jawan fell down in consequence also pillion rider of the accused person also fell down with gunny bag containing Nepali Charas. The said gunny bag was seized which contained 27 packets of Charan total 11.5 Kg. Charas. Seizure list was prepared. However, the accused person driving the motor cycle flee away where one

person fell down caught with Charas in gunny bag disclosed his name as Ram Pakur Ram and disclosed the name who was driving the motorcycle as Lal Mohhamad.

4. F.I.R. lodged on the written report of the informant K. H. Somani Singh Deputy Inspector B.O.P. Commander.

5. However, police after investigation submitted charge sheet. Cognizance taken and trial proceeded after framing of the charge for offence under Sections 20(b)(ii)(c), 22(c) and 23(C) of the N.D.P.S. Act. During investigation, six witnesses were examined. P.W. 1 is K. H. Sonamani, P.W. 2 is Ajaybir Singh, also member of the patrolling party who after received information kept on vigil and apprehended the appellant and had supported the prosecution case regarding catch hold of the appellant recovery of Ganja in gunny bag, P.W. 3 is Prem Paswan, is seizure list witness, P.W.4 is Pranab Handique, Head Constable, S.S.B., P.W. 5 Mubaya H. Ram, Constable, 27 Battalion and P.W. 6 is Sheshmani Patel. All the witnesses were examined. Documentary evidence had been adduced as Exhibit-1 P.W.1 had proved seizure list, Exhibit-2 P.W. 1 has proved his signature on written report, Exhibit1/1 P.W. 2 has proved his signature on seizure list, Exhibit-3 P.W. 3 has proved his signature on seizure list, Exhibit-1/2 P.W. 4 has proved his signature on seizure list, Exhibit-1/3 P.W.5 has proved his signature on seizure list, Exhibit1/4 P.W.6 has proved



his signature on seizure list and Exhibit-4 is F.S.L. report. All the witnesses are member of the raiding party who after received information kept vigil at Pillar No. 525 thereafter, chased and caught hold accused at Pillar No.423 and alleged that Charas was recovered from the gunny bag from the possession of the appellant when he fell down from motorcycle while he was sitting as pillion rider on the motorcycle driving by the co-accused lal Mohammad who managed to flee away, but this appellant fell down from the motorcycle and was apprehended and caught hold by the patrolling party with Charas.

6. The trial court taking into consideration both oral and documentary evidences of the witnesses convicted the appellant as stated above at the outset.

7. Learned counsel for the appellant however challenged the order of conviction and sentence recorded by the trial court and it is submitted that there is contradiction of evidence of witnesses regarding apprehension of the appellant. It is further submitted that I.O. of the case has not been examined in this case. There is no evidence whatsoever where the article seized were kept. It is submitted that seizure list was prepared on 18.07.2010. However, the report of F.S.L. shows that article seized were sent on 23.11.2010 to the Diretor, Forensic Science Laboratory and same was received on 03.12.2010. Further, it is submitted that there is no evidence who sent



the sample of the seizure article and whether sample was taken from each of the packet seized. There is no mentioned that weight of each of the single packet when total article seized contained 11.5 Kg. It is further submitted that there is no evidence that whether article seized were sealed by the Officer-in-Charge of the police station. It is submitted that neither Officer-in-Charge of the police station has been examined nor it has come where article seized was kept after its seizure. It has further been contended neither seizure list has been produced before the court nor there is any certification of the Magistrate having been proved nor there is order of destruction has been brought on record and it has not brought on record who took sample and who sent it to Forensic Science Laboratory. It has further been pointed out there is nothing in evidence brought in record that sample sent to F.S.L. taken from the seized article from each packet and was sent with sealed of the Officer-in-Charge of the Police Station and hence there is violation of Section 52, 55 and 57 of the N.D.P.S. Act.

8. Learned counsel for the State however contends that there is sufficient evidence to suggest that the appellant was apprehended with gunny bag containing Charas. F.S.L. report shows sample received is Charas and sample received in connection with Bhangaha P.S. Case No.22 of 2010, dated 18.07.2010.

9. Having regard to the respective submissions, I proceed to consider whether prosecution has been able to prove the charges against the appellant. However, the prosecution case as stated above that the informant after receipt of information kept on vigil and when the motorcycle appeared, he asked to stop, when the motorcycle did not stop and proceeded then the said motorcycle chased by Jawan after overtaking the motorcycle they were asked to stop, but the accused persons driving the motorcycle gave kick and in a result the person sitting as pillion rider fell down with gunny bag and gunny bag recovered. Though, witnesses have stated that the appellant apprehended and recovered of gunny bag containing 27 packets total 11.5 Kg. Charas and even seizure list was prepared for the same. However, in this regard, evidence is absolutely silent and witness has not whispered. However, P.W. 1 the informant stated in his cross-examination that seizure list was prepared at the head quarter and copy of seizure list was not given to the accused person. Further P.W. 1 has handed over the seizure article and accused to Bhangaha police station. However, neither I.O. has been examined in this case nor Officer-in-Charge of the police station has been examined in this case. However, charge sheet had been mentioned that I.O. of the case one C.P. Singh, Officer-in-Charge of Bhangaha P.S. There is no evidence where seized article was kept. There is not mentioned whether seized



article was kept in sealed cover with seal of the Officer-in-Charge of the police station. There is no evidence whether sample was taken from the seized article. There is no evidence who took out the sample and who sent the sample to F.S.L. and whether sample were at all taken from the seized article, though, six witnesses were examined and supported the prosecution case regarding apprehension of the seized article from the accused person, but there is no evidence that where seized article was kept after seizure from the date of occurrence dated 18.07.2010. However, F.S.L. report shows sample was received on 23.11.2010 and hence this intervening period from the date of seizure and date of sending the sample to F.S.L. is more than four months and there is no evidence that where seized article was kept during this period. There is no evidence who took out the sample from the seized article and there is no evidence whether Sections 52, 55 and 55 of N.D.P.S. has been complied.

10. However, Section 52 (A) of N.D.P.S. Act provides that when Narcotic drugs and psychotropic substance has been seized and forwarded to the Officer-in-Charge of the nearest police station shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quantity, quality, mode of packing, marks, numbers or such other identifying particulars and country of origin and was making an



application to any Magistrate for the purpose of (a) certifying the correctness of the inventory so prepared; or (b) taking in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

11. However, there is no evidence that the provision contend in Section 52 (A) ever complied by the Officer-in-Charge who received the article from the informant.

12. Further Section 55 of the N.D.P.S. Act provides that article seized is required to be kept in sealed cover in save custody and affix the seal of the Officer-in-Charge of the police station. However, sample taken from the said seized article is required kept in seal of the police station. Further Section 57 of the N.D.P.S. Act provides that person arrested and seizure of article be reported to the immediate official superior within 48 hours.

13. However, there is no compliance of Section 52(a), 55 and 57 of N.D.P.S. Act. Further most important feature is that article seized is neither produced nor certification has been provides regarding those article having been produced before the Magistrate. There is no mentioned whether sample taken from seized article and

from the report of the F.S.L. it has not been established that sample was taken from the seized article and hence the report of Forensic Science Laboratory is not establish to have been taken from the article seized to record conviction.

14. Hence order of conviction and sentence recorded by the trial court is not sustainable and is hereby set aside as prosecution has not been able to prove the charges beyond reasonable doubt. **The appeal is allowed.** The appellant is in jail custody be set at liberty forthwith if not required in any other case.

m.p.
NAFR

(Gopal Prasad, J)

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