

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 425 of 2014

Against the judgment of conviction dated 30.05.2014 and order of sentence dated 09.06.2014 passed by Shri Atul Kumar Srivastava, learned 3rd Additional Sessions Judge, West Champaran, Bettiah in Tr. No. 52 of 2011 arising out of N.D.P.S. Case No. 17 of 2011/Sikta P.S. Case No. 12 of 2011

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Sanwar Alam, Son of Late Sahban Mian, Resident of village - Sikta Bazar, P.S.-
Sikta, District- West Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Bimlesh Kumar Pandey, Advocate

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

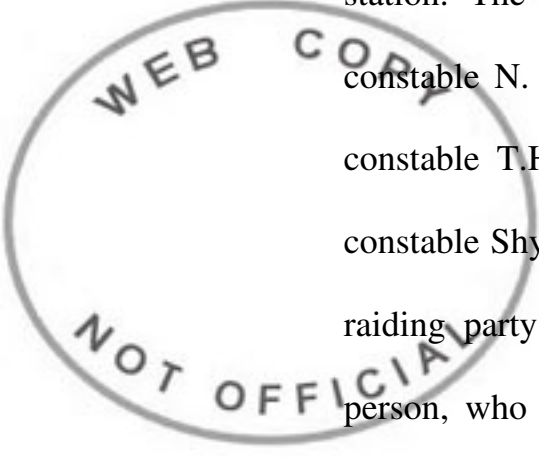
ORAL JUDGMENT

Date: 10-09-2015

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

2. The sole appellant has been convicted for the offence under Sections 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as the “NDPS Act”) and has been sentenced to undergo rigorous imprisonment for ten years and also to pay fine of Rs.1,00,000/- and in default of payment of fine to undergo additional imprisonment for two years.

3. The prosecution case, as alleged in the written report by the informant Odam Kanedi Singh, the Assistant Commandant (P.W.4), S.S.B. Sikta, before the Officer-in-Charge, Sikta, West Champaran, is that on 17.02.2011 at about 2:00 P.M. a raiding party was sent from Sikta Camp to railway station, Sikta as he had got information from a source



that a ganja party was coming from Nepal and going to Sikta railway station. The further case is that the raiding party constituted of the constable N. Sanatan Singh (P.W. 3), constable Talut Mingki (P.W. 6), constable T.H. Rupa Chandra Singh (P.W. 1), Chandra Singh and the constable Shyamlal (P.W. 5), Yaspal (P.W. 2) and all the members of the raiding party returned in the camp at about 10:00 P.M. along with a person, who disclosed his name as Sanwar Alam, with 20 Kgs. ganja. While the raiding parties were going to Naka, they saw some persons, along with some articles carrying on their back, to be going towards Sikta railway station and as soon as the raiding party proceeded to catch hold of them, then they started fleeing away. The raiding party caught hold of one person out of them at Nahar Chouk, Sikta and on his search it was learnt that the articles being carried on his back were ganja. The person apprehended disclosed that he came along with four other persons after taking ganja from one Rasul Mian and the said ganja was required to be sent to Sirsawa by train and thereafter the seizure list was prepared and attached with this written report. On the basis of the written report (Ext.3) the First Information Report was lodged, investigation proceeded and after investigation, charge-sheet submitted, cognizance taken and trial proceeded after framing of the charge for the offence under Section 22(C) of the NDPS Act.

4. During the trial, six witnesses were examined, who are P.W.

1 T.H. Rupa Chandra Singh, P.W. 2 Yaspal, P.W. 3 N. Sanatan Singh,

P.W. 4 Odam Kanedi Singh, P.W. 5 Shyamlal, P.W. 6 Talut Mingki.

5. From perusal of the evidence, it is apparent that except P.W. 2 the other witnesses have specifically stated that they were members of the raiding party and they saw some persons coming with some articles and on seeing them they started fleeing away and then one person was apprehended out of them along with 20 Kgs. of ganja and was taken to Sikta camp and there the ganja was weighed and handed over to the Officer-in-Charge, Sikta. P.W. 4 sent the raiding party and caught hold of one person and ganja produced before him weighed 20 Kgs. He prepared the seizure list and had proved Exts. 1, 2 and 3 and handed over the accused person along with the seized ganja to the police station.

6. However, neither the Officer-in-Charge of the police station has been examined in the case nor has the Investigating Officer been examined in the case. There is no evidence at all as to where the ganja was kept. The witnesses in the case though have supported the prosecution case to have apprehended the appellant, seized the ganja, prepared the seizure list and thereafter handed over the person apprehended along with ganja to the police station. However, they have stated specifically that the said ganja was in sealed cover. However, the informant has stated that he gave the written report along with the ganja with seizure list and the person arrested to the police station. However, there is no evidence at all that after lodging of the First Information Report what happened with the ganja, though the prosecution has proved Ext. 4 the FSL report. The FSL

report mentions that the sample of ganja has been received in his office on 25.10.2011 which was sent vide memo no. 2263, dated 18.10.2011 and on examination it was found to be ganja but there is no evidence whether the sample of ganja received in the Forensic Science Laboratory Office, was actually the sample taken from the seized ganja and then there is missing link to hold that the article seized was ganja.

7. However, the question for consideration here is that the occurrence took place on 17.02.2011. The First Information Report was lodged on 18.02.2011 but there is no evidence whether the ganja seized was sealed. There is no evidence as to where the ganja was kept from 17.02.2011 the date of its seizure till 18.10.2011 the date of its sending to the Forensic Science Laboratory. There is no evidence that there is any compliance of Sections 52A, 55 and 57 of the NDPS Act. The ganja, which was sealed, has neither been produced nor the certificate of its destruction as per Section 52A of the NDPS Act has been complied with and there is no evidence at all as to where the sealed ganja was kept. There is also no evidence on the points whether the sample was taken from the said ganja, whether the said ganja was produced before the Court and whether the said ganja was produced before the Magistrate as per Section 52 A of the NDPS Act. There is also no evidence that the representative sample was taken from the ganja seized. There is no evidence that the said representative sample was sealed. Neither the Officer-in-Charge of the police station nor the Investigating Officer of the case, who sent the

sample of the seized articles, has been examined.

8. The trial Court has misdirected itself in holding the appellant guilty without going into the question whether the sample sent was actually the sample taken from the seized ganja, there is no compliance of Sections 52A, 55 and 57 of the NDPS Act and even without any evidence that the sample was taken from the said seized ganja and whether the sample was sent to the FSL and in the absence of those evidences it was not proper to rely upon the report of the Forensic Science Laboratory, which also has been proved formally, but no witness has come to depose.

9. Hence, I find and hold that the prosecution has not been able to prove the charges against the appellant beyond reasonable doubt and the judgment of conviction dated 30.05.2014 and the order of sentence dated 09.06.2014 passed by Shri Atul Kumar Srivastava, learned 3rd Additional Sessions Judge, West Champaran, Bettiah in Tr. No. 52 of 2011, arising out of N.D.P.S. Case No. 17 of 2011/Sikta P.S. Case No. 12 of 2011, are hereby set aside and the appeal is allowed. Let appellant, namely, Sanwar Alam who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J.)

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N.A.F.R.

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