

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.166 of 2015

Against the judgment of conviction, dated 03.03.2015, and order of sentenced dated 04.03.2015, passed by Mr. Prabhakar Mishra, Additional District and Sessions Judge, III, West Champaran at Bettiah, in Trial No. 29 of 2010 arising out of Mainatand P.S. Case No. 1 of 2010

1. Rajesh Mahto son of Mohan Mahto, Resident of village- Shohari, P.S.- Sherwa, Distt.- Parsa (Nepal) Appellant

Versus

1. The State of Bihar Respondent

Appearance :

For the Appellant : Mr. Amrendra Nath Verma, Adv.

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

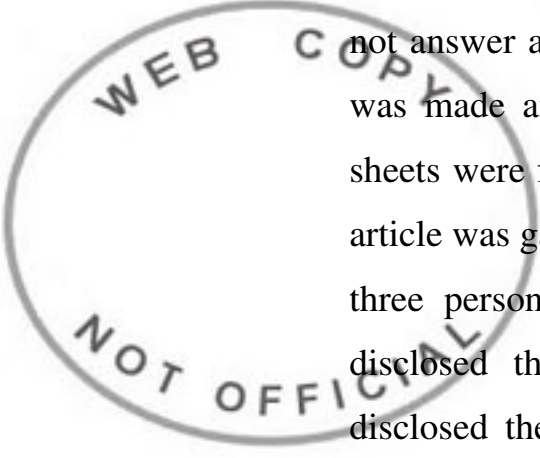
ORAL JUDGMENT

Date: 30-11-2015

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Sections 20(b)(ii)(c), 22(c) and 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and has been sentenced to undergo rigorous imprisonment for ten years on each count and a fine of rupees one lakh on each count and in case of non-payment of fine the appellant has been ordered to undergo simple imprisonment for two years. However, it has been ordered that all the sentences shall run concurrently.

3. The prosecution case as alleged by the informant, Udai Kumar, Station House Officer, Mainatand Police Station, Bettiah, that on 04.01.2010 he was engaged in checking the vehicle of Bettiah-Mainatand Road at 06.05 A.M. Then, at about 06.15 A.M. he saw two persons were coming on bullock cart from north direction. The bullock cart was loaded with straw. He stopped the bullock cart, then, saw three persons were coming behind the bullock cart at a distance of about 15 meters from bullock cart. The bullock cart was stopped. He saw the persons present turned down and started fleeing away. The informant asked to stop and also directed the Constable to catch hold. The three



persons managed to escape. On enquiry from two persons who were on the tyre cart about any article concealed under the straw, then, they could not answer and then in presence of two independent witnesses a search was made and under the straw 15 plastic packets wrapped in plastic sheets were found tied. On untying the same it was learnt that the said article was ganja. On enquiry from these two persons they disclosed that three persons, fled away, were owners of ganja. The two persons disclosed their names as Rajesh Mahto and Jitendra Manjhi and disclosed the names of persons, who fled away, were Shyam Sunder Yadav, Heera Man Yadav and Lorik Yadav, thereafter, the seizure list was prepared before the Circle Inspector, Rameshwar Rai, who was authorized by the Block Development Officer-cum-Circle Officer, Mainatand, in presence of two independent witnesses, Kapur Chand Sah and Bijli Sah, and the seizure list prepared with regard to 15 packets of ganja weighing about 105 Kg and each packet contains about 7 Kg and the bullock cart and bullocks were seized. The self statement of the informant was recorded on the basis of which first information report lodged and investigation proceeded. The investigating officer recorded the statements of the witnesses. He filed petition for sending the sample of the seized article to the Court and the sample was sealed before the Judicial Magistrate, which was sent to Forensic Science Laboratory, Patna, and after completion of the investigation, charge sheet submitted against Rajesh Mahto. On the charge sheet, the cognizance taken and the trial proceeded after framing of the charge.

4. During the trial five witnesses were examined.
5. P.W. 1 is Kapoor Chand Sah who has been declared hostile by the prosecution as he has not supported the prosecution case. As per his evidence that he has no knowledge about the occurrence. P.W. 2 is Bijli Sah. He has also been declared hostile by the prosecution as he deposed that he did not know about the occurrence. P.W. 3 is the

informant, Udai Kumar. He is the informant of the case and deposed supporting the prosecution case that while on mobile checking, he saw a bullock cart coming and after the bullock cart, three persons were coming and on seeing them the three persons started fleeing away, but, the three could not be apprehended and two persons, one the driver of the bullock cart and other on the said bullock cart were apprehended and their personal and search of the bullock cart were made, no incriminating article recovered from their possession, but, from the bullock cart 15 packets of ganja concealed under the straw were recovered, each containing 7 Kg and the persons, who were caught, disclosed their names as Rajesh Mahto and Jitendra Manjhi. The seizure list were prepared and signatures of the apprehended persons as well as the independent witnesses were taken on the seizure list and, thereafter, they brought the ganja, bullock cart and the accused persons to Police Station. However, out of the two accused apprehended, one managed to escape. P.W. 4 is retired Circle Officer and has come to depose that the ganja were seized.

6. P.W. 5 is the investigating officer and stated that he got the investigation of the case on 04.01.2010, itself, recorded the further statement of the informant as well as the witnesses, inspected the place of occurrence and stated that he filed a petition for sending the sample of the seized article and sent the sample to the Forensic Science Laboratory, Patna.

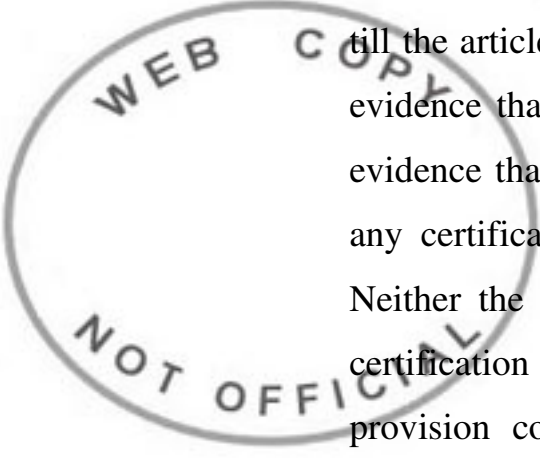
7. The trial Court taking into consideration the evidence of the witnesses and the report of the Forensic Science Laboratory, convicted the appellant, as mentioned above.

8. The learned counsel for the appellant, however, contends that neither the seized article has been produced in Court nor any certification has been produced regarding the nature of the article, seized, nor the photographs taken. It has, further, been contended that

there is no evidence that the article, seized, were sealed at the spot or at the Police Station. There is no mention that where the articles were kept during the period from the date of seizure till the article, seized, were sent to the Forensic Science Laboratory and there is no evidence whether the sample taken from each of 15 packets, seized, nor any malkhana register or evidence has been produced that whether the articles were kept in safe custody or not.

9. The learned counsel for the State, however, contends that there is specific evidence that the articles were seized beneath the straw from the bullock cart and the said articles were 15 packets of ganja each containing 7 Kg, hence, the articles, seized, were in commercial quantity and there is evidence that samples were taken before the Judicial Magistrate and were sent to Forensic Science Laboratory and report of the Forensic Science Laboratory that the article, seized was ganja, hence, the conviction and sentence is sustainable.

10. Going into the respective submissions in the light of the evidence adduced, it is apparent that the articles were seized from the bullock cart. The only two material witnesses are in the case are P.Ws. 3 and 5. P.W. 3 is the investigating officer has stated that the investigation were handed over to him with seized article. There is no evidence whether the articles, seized, were weighed at the place of occurrence and it was found that each packets contains 7 Kg so the total weight of the article, seized, is 105 Kg, but, there is no evidence that where the seized article were kept. The investigating officer has stated that he filed petition before the Court for taking the sample and sending it to Forensic Science Laboratory, but, there is no evidence that on what date and at what time the articles seized were sent. However, from the perusal of the Forensic Science Laboratory report, it appears that the articles were sent by Memo No. 483/2010, dated 05.03.2010, hence, it is apparent that the articles seized on 04.01.2010 and sent on 05.03.2010, after a lapse of



about two months. However, there is no evidence that where the articles, seized, were kept during the period from the date of its seizure till the article was sent to the Forensic Science Laboratory. There is no evidence that those articles were kept in sealed cover nor there is any evidence that the articles, seized, were produced before Magistrate and any certification of the Magistrate about the goods, seized, obtained. Neither the articles were produced before the Court nor there is any certification of the Magistrate of the article with photograph, as per the provision contained under Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides that unless the articles seized before forwarding to the Officer-in-Charge of the nearest Police Station and inventory be prepared in detail and then to make an application to any Magistrate for the purpose (a) certifying the correctness of the inventory so prepared, (b) taking the photographs of such drugs or substance in presence of the Magistrate and certifying such photographs as true and (c) allowing to draw representative samples of such drugs or substance in the presence of such Magistrate and certifying the correctness of any list of sample so drawn. However, there is no evidence that any certification of the articles, seized, were made, nor there is any certification of the Magistrate nor the photographs taken nor the articles, seized, were produced nor there is compliance of Sections 55 or 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides that the articles, seized, shall be kept in sealed cover with a seal affixing with the seal of the Officer-in-Charge of the Police Station and the sample taken be also be sealed with the Officer-in-Charge of the Police Station. Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides that within 48 hours of the said seizure a full report of particular be given to the immediate

official(s) superior, however, there is no compliance of either Sections 55 or 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

There is no evidence that where the articles were kept for the period, from the date of occurrence, dated 04.01.2010 on it's seizure, till the date of sending the sample, i.e., 05.03.2010, hence, the authenticity of the sample sent appeared to be doubtful and the conviction on the basis of the report of the Forensic Science Laboratory on said sample sent is not sustainable.

11. The trial Court misdirected itself in taking into consideration the respective submission, hence, the order of conviction, recorded by the trial Court, is hereby **set aside** and the appeal is **allowed**.

12. Since, the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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