

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.80 of 2011

Arising Out of Special Case No.25, Year- 2007, District- PATNA

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Md. Hafiju Rahman, s/o late Md. Izhar, r/o goriya, P.S.- Banjariya, Distt.- Motihari

.... Appellant/s

Versus

1. The State of Bihar
2. The Union Of India

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dilip Kumar, Adv
Mr. Bimlenshu Kumar Pandey, Adv.
For the State : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-12-2015

Heard learned counsel for the Appellant and the learned
Additional Public Prosecutor.

2. The Appellant has been convicted under Sections
20(b)(ii)(c) of the NDPS Act passed by the Additional Sessions
Judge-XI, Patna, vide Judgment and order of sentence dated
30.10.2010/02.11.2010 in Special Case No. 25 of 2007 by which he
has been convicted and awarded sentence to undergo rigorous
imprisonment for 15 years and also to pay fine of Rs.1,00,000/- in
default of which further rigorous imprisonment for two years.

3. The case of the Prosecution, according to the



Informant Arun Kumar, PW-1, is that an information received from S.I. Mahesh Kumar, PW-3, that on 19.4.2006 at 8:30 A.M. a particular vehicle was traveling with Ganja which was being chased by him. He then reached a particular point where he saw the vehicle coming and soon thereafter, PW-3, Mahesh Kumar, also parked his Motorcycle there. As per the rules of search, he searched the vehicle and found 12 packets of Ganja in a Plastic bag, each containing 20 Kg. i.e. 240 Kg. in all. The statement of the accused i.e. Appellant and one Manoj Rai was recorded who stated that the Ganja was that of Md. Musaid of Motihari as also the vehicle containing Ganja and that they were going to Patna City to deliver the goods carrying it from Raxaul.

4. During Trial, the Prosecution examined four witnesses. PW-1 Arun Kumar, Informant, reiterated the statement given in the *Fardebeyan* and that he had received secret information at which the vehicle was intercepted, and on search of the car, 12 bags of Ganja each containing 20 Kg. was recovered. On query from the accused persons, they did not give any reliable information. A seizure list was prepared which was duly signed by the accused persons and given to them. He proves the same as Ext.-1. He also proves the First Information Report which is marked as Ext.2 and 2/1. In cross-examination, he stated that he had not taken any kind of training with

regard to the identification of Ganja or the details as also the manner in which the Car was intercepted. He did not call for any Government official for searching the same.

5. PW-2, Raushan Kumar, was a seizure witness who has been declared hostile.

6. PW-3, S.I. Mahesh Kumar, Motihari, stated that on 19.4.2007, he received information that a Tata Sumo bearing a certain number would be carrying Ganja at which he chased the vehicle and then informed the Malsalami Police Station in this regard. PW-1, S.I. of Malsalami P.S., Arun Kumar, was present there along with Force on the intersection where the vehicle was stopped and searched. He identified the Appellant through one of the persons who had been apprehended. He said that the seizure list was prepared in the presence of two independent witnesses who also signed on the same which was handed over to the accused persons. In cross-examination, he stated that the seized articles were not present in the Court and he had smelled the articles, on the basis of which, he stated that the article was Ganja. He did not do any investigation in the present case. However, he stated that the articles were weighed at the place of occurrence itself and the Ganja was loaded in the back of the Car.

7. PW-4, Dinesh Kumar, is the Investigating Officer who stated that on 19.4.2007, he proceeded to the place of occurrence



and recorded the *Fardebeyan*. He further stated that he inspected the place of occurrence and noted the registration number of the vehicle as also of the Motorcycle of PW-3. The Appellant was brought to the Police Station and the seizure list was given to him. In cross examination, he stated that he did not note in the case diary as to how such sample was drawn from the Ganja seized nor has he mentioned anything about the sealing of the articles. He also stated that he did not receive the FSL report during investigation.

9. The Prosecution also examined the FSL report which is dated 3.9.2009. From the said report, we find that the article for testing was received in the office on 28.1.2008, even though, it was seized on 19.4.2007. We find that even though the article was seized on 19.4.2007, there is no evidence as to where the same was kept in the intermediary period. We also find that there is no positive evidence as to how the samples were drawn or sent to the FSL. In such circumstances, the FSL report has no meaning whatsoever.

11. Having considered that there is complete paucity of evidence as to how the samples were drawn, merely oral evidence that alleged 'Ganja' was recovered from the possession of the Appellant would not be enough to sustain his conviction. Hence, the Appeal is allowed and the Judgment of conviction dated 30.10.2010 and order of sentence dated 02.11.2010 passed by the Additional Sessions

Judge-XI, Patna, in Special Case No. 25 of 2007 is hereby set aside.

The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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