

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.672 of 2010

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Tulsi Mahato son of late Bachan Mahto, R/O Village-Inerwa, PS-Ramgarhwa,
Distt-East Champaran,

.... Appellant/s

Versus

The Union of India & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Patanjali Rishi, Amicus Curiae

For the Respondent/s : Mr. Manoj Kumar, CGC

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-08-2015

The sole appellant, Tulsi Mahto who has been found guilty for an offence punishable under Sections 20 (b) (ii) (c) of the NDPS Act and further, been directed to undergo RI for 10 years as well as also slapped with fine appertaining to Rs. 1 Lakh in default thereof to undergo SI for six months by Additional Sessions Judge-cum-Special Judge, FTC-IV, East Champara at Motihari in NDPS Case No.41/2004 has challenged the same under present appeal.

2. Md. Tahir Hussain (PW-1), complainant, a custom official had alleged that on getting confidential information, a raiding party was constituted and house of appellant which was jointly occupied by his brother Teji Mahto, subsequently corrected as Jagdeo Mahto was raided and from a Berhi (granary) 22 packets of Ganja weighing 110 Kgs was seized in presence of two seizure list witnesses, Abdul Rahman and Pradeep Kumar.



3. As per para-2(3) of the complaint petition, it is apparent that the aforesaid recovered articles were taken to Raxaul office where sampling was done. One of the sample was sent to Government Opium & Alkaloid Work, Ghazipur wherefrom report was awaited. It has also been disclosed that Tulsi Mahto and Jagdeo Mahto were noticed but at an earlier occasion they did not respond, however, on 22.03.2004, a letter at their end was received by him whereunder they stated that they had got no knowledge regarding recovery of Ganja from their house. The letter further contains the averment that they are daily wages earners and it might be possible that in their absence somebody else would have kept the same in order to falsely implicate the appellant.

4. In the aforesaid background, they were again noticed but failed to appear. On account thereof, prosecution had been lodged under Section 20 (b) (ii), 23, 27A, 29 of the NDPS Act.

5. It is apparent from the record that cognizance of offence was taken on 24.09.2004 and the presence of appellant on the basis of warrant of arrest (non bailable) was effected on 09.02.2008. Subsequently thereof, the trial commenced, proceeded and culminated in a manner as indicated above acquitting Jagdeo Mahto while convicting appellant, the subject matter of instant appeal.

6. Defence as pleaded as well as mode of cross-

examination, suggest complete denial. It has further been asserted that neither the house belonged to him, nor any kind of recovery was made from his house. As such, it is out and out a case of plantation.

7. While challenging the judgment impugned, it has been submitted on behalf of appellant that prosecution suffers from inherent lacuna and on account thereof, the judgment impugned does not justify its prevalence. To support the same, it has been submitted that right from the complaint petition, it is apparent that none was present inside the house or near about the house. Whether the house is habitable or not, is also not apparent from the complaint petition as well as from the evidences of the PWs, more particularly, prosecution had also failed to substantiate their claim that the house, where raid was conducted, belongs to the appellant. Unless and until, there happens to be conclusive evidence on that very score, appellant cannot be arrayed as an accused on account of recovery of so alleged 110 Kgs of Ganja. Furthermore, the learned lower court also failed to conclude like so. Hence, the judgment impugned is ignominious.

8. It has further been submitted that there happens to be utter violation of Section 42(2) of the NDPS Act coupled with Section 57 whereunder there happens to be an obligation on the part of the prosecution party, more particularly, the authority having been engaged in search and seizure to report his superior officer within 48

to 72 hours. None of the witnesses, more particularly, PWs-1 and 2 had stated that they had informed their superiors. Therefore, there happens to be willful violation of mandatory provision of law.

9. In likewise manner, it has also been submitted that there was no sampling and that happens to be the reason behind that no material exhibit has been produced before the learned lower court during course of trial. The destruction report is not going to improve the case of the prosecution in terms of Section 52 (A) (2) of the NDPS Act. Consequent thereupon, it could well be inferred that there was no search and seizure, no recovery and all the events happen to be a paper work. Apart from this, there happens to be severe fault at the end of prosecution and that happens to be reason behind with regard to presence of inconsistency amongst the evidence of the PWs on this very score. Some of the witnesses have deposed that only three packets out of 22 packets so allegedly recovered, was opened and sampling was made while some had stated that six packets were opened and sampling was made. When there was 22 packets, in law it was incumbent upon prosecution to have prepared sampling against each of the packet independently and each one would have been sent to the Forensic Science Laboratory for chemical examination. Apart from this, none of the witnesses have stated that sampling was independently made with regard to each packet, be it three or six. In

the aforesaid background, it has been submitted that there happens to be utter violation of law on this very score also.

10. Furthermore, it also has been submitted that custom official were not authorized to keep the seized Ganja in the background of Section 55 of the NDPS Act whereunder the Officer Incharge of a police station has been entrusted to take charge and keep those articles in safe custody till an order is passed by the Magistrate on this very score. Even having such order, the articles which was to be delivered was to carry, seal and signature of the Officer Incharge. Contrary to it, it has been submitted that witnesses had admitted that they had not produced the seized article before the police. At the other end, they kept it confined at their own and got it destructed as per Ext-6.

11. The aforesaid facts and circumstances as well as persisting legal deficiencies, do not justify the judgment of conviction and sentence.

12. On the other hand, learned counsel representing Union of India submitted that the appellant had not controverted or challenged the recovery in question. That being so, mere irregularity having been during intervening course will not make the prosecution invalid. Furthermore, identity of the house in question belonging to the appellant has duly been proved by the witnessed during course of

evidence and on account thereof, the judgment of conviction and sentence rendered by the learned lower court is fit to be confirmed.

13. In order to substantiate its case, the prosecution had examined altogether 12 PWs out of whom, PW-1, Md. Tahir Hussain, PW-2, A.P. Mishra, PW-3, V.K. Dubey, PW-4, H.N. Jha, PW-5, N.N. Sinha, PW-6, S.K. Gagrai, PW-7, R.S. Sharma, PW-8, S.K. Singh, PW-9, A.K. Singh, PW-10, Binod Kumar, PW-11, A. N. Sahay and PW-12, Raj Kumar Paswan. Side by side, the prosecution had also exhibited Ext-1, Panchnama, Ext-2, Seizure list, Ext-3, examination report, Ext-4, complaint, Ext-5, Certification, Ext-6, Destruction.

14. On the other hand, the defence had also examined DW-1, Jugal Kishore Ojha, however, no documentary evidence has been adduced on behalf of accused/appellant.

15. Right from complaint petition as well as from the evidence of the witnesses, there happens to be consistent version of the prosecution that they came to know with regard to concealment of narcotic substance at the house of Tulsi Mahto as well as Teji Mahto and on account thereof, raiding party was constituted and the house was raided. During course of enquiry, the aforesaid Taji Mahto was corrected as Jagdeo Mahto and accordingly, they both were prosecuted. That means to say, the prosecution had identified both of them in jointness. In the aforesaid background, the possession should



have been in jointness. None of the witnesses has identified or distinguished the event in between Tulsi Mahto and Jagdeo Mahto. That being so, it happens to be a case of joint possession and the prosecution failed to identify exclusive possession of Tulsi Mahto, then in that event, acquittal of Jagdeo Mahto, a co-accused would certainly give an adverse impact.

16. Furthermore, in its continuity over the present theme, it is apparent from the complaint petition as well as from evidence of all the witnesses that at the time of conduction of raid, none was present. None of the witnesses including averments of the complaint suggest presence of any kind of article having been kept inside the house whereupon, one could infer that the house was habitable one. The most surprising feature is that none of the witnesses had stated that they entered into any room of the house during course of search rather they had directly gone to the courtyard where granary was and then took out 22 packets of Ganja. In likewise manner, prosecution had not cared at least to record names of co-villager who had disclosed that the house where the search was made, belongs to appellant, Tulsi Mahto. So, exclusive domain of Tulsi Mhato concerning the house where raid was conducted remained under mystery and save and except stated that the house belonging to Tulsi Mahto, nothing more has been brought up on record by the prosecution to suggest exclusive

possession. At the present moment, absence of seizure list witnesses, namely, Abdul Rahman as well as Pradeep Kumar happen to be of great relevance who could have at least identified the house in question to be that of appellant, Tulsi Mahto.

17. The aforesaid event should also be seen through another angle as the aforesaid seizure list witnesses, Abdul Rahman as well as Pradeep Kumar have not been cited as witnesses in the complaint and the reason best known to the prosecution.

18. Now coming to the main part of allegation, it is apparent that prosecution had claimed seizure of 22 packets of Ganja. It is apparent from the complaint petition that simply disclosure has been made under para-2.4 to the effect that “ *the recovered Ganja was seized under Section 43 of the NDPS Act, 1985 and representative samples of the seized consignment were drawn before the independent witnesses for alkaloid test & other purpose*” but, the aforesaid disclosure is found completely frustrated. None of the PWs had stated that all the 22 packets were opened and sample was prepared relating to them independently. Contrary to it, PW-1 in his examination-in-chief itself had disclosed that during course of action three samples were prepared which was sealed and bears signature of independent seizure list witnesses. This witness during course of cross-examination at para-9 had stated that 5-6 packets were opened.



Sampling was taken out from the aforesaid six packets weighing about 25 grams sample was sealed at that very moment itself. He has further admitted that sample has not been produced in court. PW-2, during course of examination-in-chief had state that after seizure the witnesses were requested to come to Raxaul Custom Office where sampling was made. Three samples were prepared out of which one was sent to Ghazipur for examination. During cross-examination, at para-7, he had stated that sample was not weighed. Other witnesses had also divulged in same manner. Therefore, from the evidence as referred above the sampling was not in accordance with law, more particularly, relating to 22 packets allegedly, recovered from granary located in the courtyard of Tulsi Mahto, appellant as disclosed.

19. It is also apparent from the complaint petition that neither complainant nor any official engaged during course of raid had ever informed superior officer regarding search and seizure. Virtually, it appears that the prosecution party lost or was unknown to the fact whether there happens to be such kind of requirement in terms of Section 42 (2) as well as Section 57 of the NDPS Act. In likewise manner, they failed to transfer the possession of the seized article to the police in terms of Sections 52 as well as 55 of the NDPS Act.

20. Because of the fact that sample even in terms of Section 52 A (2) (b) have not been produced before this Court on



account thereof, Ext-6, the inventory prepared by the Magistrate during course of destruction of seized articles will serve any purpose in the background of the fact that it happens to be deficiency on the part of prosecution to have a proper report with regard to seized article to be Ganja. The inventory certified by the Magistrate was only with regard to destruction of property relating to particular case without identifying its character and on account thereof, Ext-6 is not going to give any support to the prosecution in the facts and circumstances of the case.

21. The Hon'ble Apex Court in the case of **Sukhdev Singh**

v. State of Haryana, reported in **AIR 2013 SC 953** has held:-

13. Now, the question that arises for consideration is as to at what stage and by what time the authorized officer should comply with the requirements of Section 42 of the Act and report the matter to his superior officer. For this purpose, we must refer to Section 42 of the NDPS Act at his stage :

“Section 42—Power of entry, search, seizure and arrest without warrant or authorisation—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an

offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

14. Section 42 can be divided into two different parts. First is the power of entry, search seizure and arrest without warrant or authorization as contemplated under sub-section (1) of the said section. Second is reporting of the information reduced to writing to a higher officer in consonance with sub-section (2) of that section. Sub-section (2)



of Section 42 had been a matter of judicial interpretation as well as of legislative concern in the past. Sub-section (2) was amended by the Parliament vide Act 9 of 2001 with effect from 2nd October, 2001. After amendment of this sub-section, the words “forthwith” stood amended by the words within 72 hours”. In other words, whatever ambiguity or leverage was provided for under the unamended provision, was clarified and resultantly, absolute certainty was brought in by binding the officer concerned to send the intimation to the superior officers within 72 hours from the time of receipt of information. The amendment is suggestive of the legislative intent that information must reach the superior officer not only expeditiously or forthwith but definitely within the time contemplated under the amended sub-section (2) of Section 42. This, in our opinion, provides a greater certainty to the time in which the action should be taken as well as renders the safeguards provided to an accused more meaningful. In the present case, the information was received by the empowered officer on 4th February, 1994 when the unamended provision was in force. The law as it existed at the time of commission of the offence would be the law which will govern the rights and obligations of the parties under the NDPS Act. In the case of *Basheer @ N.P. Basheer v. State of Kerala* [(2004) 3 SCC 609: (AIR 2004 SC 2757)] wherein this Court was concerned with the Amending Act 9 of 2001 of the NDPS Act, the Court took the view of that application of the Amending Act, where the trial had been concluded and appeal was pending on the date of its commencement and where the accused had been tried and convicted, would not apply. The contention that trials were not held in accordance with law was not sustainable for the reason that there could be direct and deleterious consequences of applying the amending provisions of the Act to trials which had concluded in which appeals were filed prior to the date of Amending Act coming into force. This would certainly defeat the first object of avoiding delay in such, trials. Another Bench of this Court in the case of *Jawahar Singh alias Bhagat Ji v. State of GNCT of Delhi* ((2009)6 SCC

490): (AIR 2009 SC 2391) while dealing with the amendments of Section 21 of the NDPS Act, the Court took the view that amendments made by Act 9 of 2001 could not be given retrospective effect as if it was so given, it would warrant a retrial which is not the object of the Act. The Court held as under:-

“9. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law which was prevailing at the relevant time. As on the date of commission of the offence and/or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the amending Act, in our considered opinion, would not arise.

10. It is also a well-settled principle of law that a substantive provision unless specifically provided for or otherwise intended by Parliament should be held to have a prospective operation. One of the facets of the rule of law is also that all statutes should be presumed to have a prospective operation only.”

15. No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial.

16. Still, reference can be made to the judgment of this Court in the case of Ravinder Singh v. State of Himachal Pradesh [(2009) 14 SCC 201: (AIR 2010 SC 199)], wherein this Court was dealing with the question as to what would be the law applicable for imposition of a sentence irrespective of when the trial was concluded with reference to Article 21 of the Act and provision of the Punjab Excise Act, 1914 as applicable and amended by H.P.

Act 8 of 1995 where punishment was enhanced and minimum sentenced was provided. The Court held that it is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial".

17. Even in the case of Hari Ram v. State of Rajasthan & Ors. [(2009) 13 SCC 211: (AIR 2011 SC (Cri) 2053)], this Court stated with reference to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended by Act of 2006) that the relevant date for applicability of the Act so as the age of the accused, who claims to be a child, is concerned, is the date of occurrence and not the date of trial.

18. In the present case, the occurrence was of 4th February, 1994. The Trial of the accused concluded by judgment of conviction dated 4th July, 1998. Thus, it will be the unamended Section 42(2) of the NDPS Act that would govern the present case. The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the Investigating Officer. He is obliged to furnish the information to his superior officer forthwith. That obviously means without any delay. But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance.

19. This question is no more res integra and stands fully answered by the Constitution Bench judgment of this Court in Karnail Singh v. State of Haryana [(2009) 8 SCC 539: (2009 AIR SCW 5265)]. The Constitution Bench had the occasion to consider the conflict between the two judgments i.e. in the case of Abdul Rashid Ibrahim Mansuri v. State of Gujarat [(2000) 2 SCC 513: (AIR 2000 SC 821)] and Sajan Abraham (supra) and held as under:-

"35. In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with

the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (10) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But 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) of Section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not

be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

20. Having referred to the above settled principle of law, we are unable to accept the contention raised on behalf of the State and have to grant our approval to the submission made on behalf of the appellant.

22. In Vijay Jain v. State of Madhya Pradesh reported in (2013) 14 SCC 527, it has been held:-

9. Para 96 of the judgment of this Court in *Noor Aga Case* on which the learned counsel for the State very strongly relies is quoted hereinbelow: (SCC p. 464)

“96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery of heroin as envisaged under Section 52-A of the Act.”

Thus, in para 96 of the judgment in *Noor Aga Case* this Court has held that the prosecution must in any case produce the samples even where the bulk quantity is said to have been destroyed. The observations of this Court in the aforesaid paragraph of the judgment do not say anything about the consequence of non-production of the contraband

goods before the court in a prosecution under the NDPS Act.

10. On the other hand, on a reading of this Court's judgment in *Jitendra Case*, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in *Ashok* this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non production and this Court held that there was therefore, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant.

23. In the case of **State of Delhi v. Ram Avtar Rama**, reported in **(2011) 12 SC 207**, it has been held:-

27. It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance therewith should be strictly construed. As already held by the Constitution Bench in *Bijaysinh Chandubha Jadeja*, the theory of "substantial compliance" would not be applicable to such situations, particularly where the punishment provided is very harsh and is likely to cause serious prejudice against the suspect. The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance therewith must be ensured. The law has provided a right to the accused, and makes it obligatory upon the officer concerned to make the suspect aware of such right. The officer had prior information of the raid; thus, he was expected to be prepared for carrying out his



duties of investigation in accordance with the provisions of Section 50 of the Act. While discharging the onus of Section 50 of the Act, the prosecution has to establish that information regarding the existence of such a right had been given to the suspect. If such information is incomplete and ambiguous, then it cannot be construed to satisfy the requirements of Section 50 of the Act. Non-compliance with the provisions of Section 50 of the Act would cause prejudice to the accused, and, therefore, amount to the denial of a fair trial.

24. In the case of **Kishan Chand v. State of Haryana**, reported in **AIR 2013 SC 357**

“21. When there is total and definite non-compliance of such statutory provisions, the question of prejudice loses its significance. It will per se amount to prejudice. These are indefeasible, protective rights vested in a suspect and are incapable of being shadowed on the strength of substantial compliance.

22. The purpose of these provisions is to provide due protection to a suspect against false implication and ensure that these provisions are strictly complied with to further the legislative mandate of fair investigation and trial. It will be opposed to the very essence of criminal jurisprudence, if upon apparent and admitted non-compliance of these provisions in their entirety, the Court has to examine the element of prejudice. The element of prejudice is of some significance where provisions are directory or are of the nature admitting substantial compliance. Where the duty is absolute, the element of prejudice would be of least relevancy. Absolute duty coupled with strict compliance would rule out the element of prejudice where there is total non-compliance of the provision.”

25. Consequent thereupon, the finding of guilt coupled with sentence recorded by the learned lower court do not find favour

and is, accordingly, set aside. The appeal is allowed.

26. The appellant is under custody, he is directed to be released forthwith if not wanted in any other case.

27. The active co-operation with full vitality rendered by learned Amicus Curiae is appreciated. The first and the last pages of the instant judgment be handed over to the Amicus Curiae for the needful.

Patna High Court
August 7th 2015
Perwez/AFR

(Aditya Kumar Trivedi, J)

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