

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.202 of 2014

Against the judgment of conviction, dated 10.03.2014, and order of sentenced dated 11.03.2014, passed by Mr. Shambhu Nath Tiwary, Additional Sessions Judge, VI, Muzaffarpur, in Trial No. 52 of 2012 arising out of Sadar P.S. Case No. 192 of 2010

1. Basanti Devi Wife of Ram Chandra Sah, Resident of Village - Jamuria, P.S. - Ghorasahan, District - East Champaran Appellant

Versus

1. The State of Bihar Respondent

Appearance :

For the Appellant : M/S Radha Mohan Singh & Rajeev Ranjan, Advs.

For the Respondent : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 04-12-2015

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case, as alleged by the informant, Lallan Prasad Singh, P.W. 4, that he was posted as Trainee Assistant Sub Inspector of Police, then, he received a secret information on mobile that a bus is going to start from Muzaffarpur Bus Stand bearing registration no. BR-05AP-3339 and a lady sitting in bus in orange coloured saree with three air bags and attaché is going to Patna, with ganja on which he recorded information as sanha entry no. 963 and for verification of the said information he proceeded with the raiding party and as soon as reached near the gate of Police Station of National High Way 28, then, saw the said bus, bearing registration no. BR-05AP-3339 coming, he got the bus stopped and found the lady sitting on the rear seat in orange coloured saree and before her a yellow-black strapped bag, one yellow-white-orange-blue coloured plastic bag, one yellow-white-orange-blue coloured plastic bag, one black coloured old air bag, one slate colour old

attaché of 18", with her were searched and from three bags, two packets of ganja containing 8 Kg each and from the air bag 8 Kg ganja and from the attaché two packets, each containing 8½ Kg ganja, in all about 17 Kg from the attaché and total 51 Kg ganja recovered. The lady disclosed her name as Basanti Devi and admitted that ganja belongs to her and was taking it to Patna. She did not produce any paper with regard to ganja, hence, packet of ganja was seized before two independent witnesses and the seizure list prepared and the first information report instituted.

4. The police after investigation submitted charge sheet and the charge were framed.

5. During the trial, six witnesses were examined by the prosecution. P.W. 1 is Ayub Ali, Assistant Sub Inspector of Police of Muzaffarpur Sadar Police Station and was member of the raiding party and has deposed regarding the recovery of 51 Kg of ganja in five bags from the possession of Basanti Devi and seizure list prepared. P.W. 2 is Kashi Nath Singh, Havildar and member of the raiding party under Lallan Prasad Singh, Assistant Sub Inspector of Police and has also supported the prosecution case regarding the raid, search and seizure of ganja. P.W. 3 is the seizure list witness and proved his signature on the seizure list. However, in cross-examination has stated that his signature was taken in Sadar Police Station, Muzaffarpur, and nothing has been recovered. P.W. 4 is Lallan Prasad Singh, the informant, supported the prosecution case regarding the secret information and then he recorded the sanha and proceeded and ultimately recovery of ganja in five bags, containing about 51 Kg, and has proved the seizure list prepared with the signature of the independent witnesses and his written report marked as Exhibit 2. P.W. 5 is Suresh Mishra, Assistant Sub Inspector of Police of Missionpur Police Station, and has deposed that he got information from daroga of Muzaffarpur Sadar Police Station regarding the ganja being carried from the bus and has come to supported the prosecution case

regarding the search and seizure. P.W. 6 is the second investigating officer, who has submitted the charge sheet and has stated that he got the charge of investigation of the case on 15.09.2010 and he sent the seized ganja for examination to Forensic Science Laboratory. He has, further, stated that though the letter is dated 04.10.2010, but, it was really sent on 11.10.2010 and submitted the charge sheet.

6. The trial Court convicted the appellant in view of the investigation of the witnesses.

7. The learned counsel for the appellant has challenged the order of conviction and sentenced, recorded by the trial Court, and submits that there is violation of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It has, further, been contended that there is contradiction in the evidence of the witnesses that one of the witnesses stated that the ganja was weighed at the place of occurrence whereas other stated that it was weighed in a hotel. It has, further, been contended that there is non-compliance of Sections 52A, 55 and 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It has, further, been contended that there is no evidence that the sample taken out from each packets or even that the sample was sent to the Forensic Science Laboratory, Patna. Neither there is any certificate of the Magistrate nor there any evidence that the article was sent that the certification of the Magistrate. It has, further, been contended that neither the certification of the Magistrate has been filed nor the seized ganja has ever been produced before the Court. It is, further, contended that the representative sample of the ganja has also not been proved, hence, in the interest of justice it is not proper to place reliance on the report of the Forensic Science Laboratory.

8. The learned counsel for the State, however, contends that there is cogent and reliable evidence that on secret information, the police proceeded, conducted the raid, searched and seized the ganja. It

has, further, been contended that there is report of the Forensic Science Laboratory, which indicates that the sample was sent on 11.10.2010 and it, further, mentions that five sample card board boxes said to contain sample of ganja, seized from Basanti Devi, hence, prosecution has been able to prove the charge.

9. However, taking into consideration the prosecution case that on secret information that ganja is being carried in a bus, the police conducted the raid, caught hold of the lady having in possession of ganja in five bags and then the seizure list was prepared before two independent witnesses. However, out of two independent witnesses, one independent witness has not supported the prosecution case, but, the other witness, who was member of the raiding party, supported. However, there is minor contradiction pointed out, but, there is no evidence that after seizure of the ganja, where the seized ganja was kept nor there is any evidence that the said seized ganja was ever produced before the Magistrate for certifying the details and description regarding the quality, quantity, mode of packing, marks or other identifying particular nor there is any evidence that the sample was taken before the Magistrate or the seized ganja was ever produced before a Magistrate and the sample having been taken before a Magistrate or a photograph having been taken or certifying the photograph of the said ganja taken in compliance of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, there is no evidence that the said ganja seized or ever sealed or kept in malkhana of nearest Police Station. There is no compliance of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, to affix the seal on the seized article or to take sample or the sample taken was sealed with the seal of the Officer-in-Charge of the Police Station. There is no compliance of Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 that is after the arrest of the person and article, seized, information sent

to the superior official within 48 hours, with full report of the particulars of the arrested person.

10. However, the punishment under the Narcotic Drugs and Psychotropic Substances Act, 1985, are drastic and it is stated to be draconian law and it is well settled that the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, are required to be strictly comply with and the provisions are to be interpreted in a very reasonable manner. However, having regard to the fact that when the police received the secret information, recorded sanha entry and acted for search and seizure, but, there is no compliance of sending the report of the same under Section 42(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, it is true that seizure is in transit and compliance of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985, may not be strict as the seizure may be under Section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985. However, having regard to the facts and circumstances of this case that the police received the information in the police station and he recorded sanha entry and he proceeded to conduct raid and after search and apprehension of the accused, the requirement to comply Section 42(2) of the Act is not absolved. More over, Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, also provides that full particulars, arrest and seizure is required to be communicated to the immediate superior official within 48 hours, hence, non-compliance of Sections 42(2) and 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, casts serious doubt to the prosecution case. More over, non-compliance of Section 52A as well as Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, that the article has not been produced in the Court nor before a Magistrate for certification nor there is evidence to take representative sample, hence, there is no evidence to connect the report of the Forensic Science

Laboratory with that of the article seized.

11. Hence, having regard to the facts and circumstances that neither the article seized were produced nor the certification of the article seized by Magistrate nor there is any evidence that the sample sent with the certification of the Magistrate or the sample was ever taken before a Magistrate with a certification having been proved.

12. Hence, the prosecution has not been able to establish by cogent and reliable evidence that the article, seized, was ganja and the report of the Forensic Science Laboratory is not required to be relied, the order of conviction and sentence recorded by the trial Court is not sustainable, hence, the order of conviction and sentence is hereby set aside and the appeal is **allowed**.

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

(Gopal Prasad, J)

SA/-

U	√	T	√
---	---	---	---