

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.525 of 2014

Against the judgment and order of conviction dated 20.08.2014 and 25.08.2014 passed by Sri V. K. Sinha, Additional District & Sessions Judge-1, Naugachia, in G.R. No. 723 of 2010 (arising out of Gopalpur (Rangra) P.S. Case No. 168 of 2010.

=====

Ravindra Kumar Singh @ Ravindra Singh son of Mukti Singh resident of village- Madrauni, P.S.- Gopalpur (Rangra), District- Bhagalpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

=====

Appearance :

For the Appellant : Mr. Pramod Kumar Thakur, Advocate.
Mr. Amrendra Kumar, Advocate.
Mr. Jitendra Kumar Pandey, Advocate.
For the State : Mr. Sujit Kumar Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 13-8-2015

This appeal has been preferred against the judgment and order of conviction dated 20.08.2014 and 25.08.2014 passed in G.R. No. 723 of 2010 (arising out of Gopalpur (Rangra) P.S. Case No. 168 of 2010 passed by Sri V. K. Sinha, Additional District & Sessions Judge-1, Naugachia, by which the appellant has been convicted for offence under Sections 25(1-B)a of Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs.5,000/- and further convicted for offence under Section 26 of Arms Act and sentenced to undergo rigorous imprisonment for five years and fine of Rs. 5,000/- and in case of default of payment of fine regarding both the offences under the Arms Act, the appellant has been sentenced to

undergo simple imprisonment for two months. The appellant has been further convicted for offence under Sections 20(b)(i) of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 1,00,000/- and in default of payment of fine further sentenced to simple imprisonment for two years. All the sentences have run concurrently.

2. The prosecution case as alleged in the First Information Report by the informant, Subhash Baidyanathan, S.H.O. of Rangra O.P. alleging therein that in between the night of 14/15-07-2010 at about 11.45 P.M. he got secret information at the police station that in the house of Mukti Prasad Singh, resident of Village- Madrouni that on this house illegal arms and Ganja has been kept and is likely to remove the same and hence he recorded the Sanha No. 268 and informed the Superintendent of Police, Naugachia regarding the said information and as per his instruction, constituted a raiding party and proceeded for raid. They reached and surrounded the house of Mukti Singh for raid then he heard sound of fleeing away of three persons from the western side of the house then chased but two persons manage to escape. However, one person was arrested who disclosed his name as Pankaj Singh and name of fleeing persons were Mukti Singh and Rabindra Singh who are said to have father and brother of Pankaj Singh. Then raided the house and search was done in

accordance with law. It is alleged that one packet of Ganja recovered from the possession of Pankaj Singh weighing about 20 K.G. and on search a regular single barrel gun of 12 bore was recovered from the North Eastern room of the house of Mukti Singh which was concealed under the bed. The measurement and description of that gun has been mentioned which was loaded with one cartridge of 12 bore and 20 cartridges including one blank cartridge were also recovered which were kept in a belt of cartridges. 11 cartridges were of no. 1 and 9 cartridges were bullet. On search of room of Rabindra Singh, who had fled away one regular single barrel gun of 12 bore of given description was found kept under the bed in the north direction and this gun was also loaded with a cartridge of 1 of 12 bore and there was KF 12 Scribed in the bottom. 24 live cartridges were also recovered which were kept in a green coloured belt of cartridges in which 3 cartridges were of KF 1 and 21 cartridges were bullets of Shaktiman Express Company and in the bottom of all these cartridges, Shaktiman Express 12 bore was scribed. From the southern corner of the eastern room, a country made Katta of given description was found in an Amlirah and a packet of cartridges was also found containing 10 live cartridges of 315 bore and in the bottom of cartridges 8 MM R.F. was scribed. On that packet 315, 8 M.M-10 rimmed cartridges, bullet 244 C.R. soft none was scribed. One charger of three-not-three rifle and



cleaning rod of gun was also found. Further cash worth of Rs.1,03,070/- was recovered. It is further alleged that several other articles of fire arms was recovered in Verandah in the eastern part. Furtehr from a large size box kept on the Verandah towards eastern side, adjacent to the wall, 9 packets were recovered which were containing Ganja and its weight was about 180 K.G. A motorcycle and other articles were also recovered. Those articles were seized and seizure list prepared on which witnesses signed and a copy of seizure list was handed over to Pankaj Singh.

3. F.I.R. was drawn on the basis of statement of S.H.O., the informant and Gopalpur (Rangra) P.S. Case No. 168 of 2010 was registered for offence under Sections 414,420,472 and 473 of Indian Penal Code and Section 25(1-B)a, 26 and 35 of the Arms Act and Section 20 of the N.D.P.S. Act. Seizure list has also annexed as part of the F.I.R. After lodging of the F.I.R. investigation of the case was handed over to the I.O. During investigation, sample was sent to Forensic Science Laboratory and report was received. In the report it is stated that 10 packets seized were Ganja.

4. After investigation, charge sheet submitted on which cognizance was taken, charge framed and case was committed to the Court of Sessions. Further the case of Pankaj was bifurcated and sent to Juvenile Justice Board, Bhagalpur as Pankaj was a juvenile on the

date of alleged occurrence. After framing of the charge, eight witnesses were examined by the prosecution and taking into consideration the evidence adduced, the Trial Court convicted the appellant as mentioned above.

5. Learned counsel for the appellant has challenged the order of conviction and sentenced recorded by the trial court. It is submitted that P.W. 1 has not supported the prosecution case. P.W. 2 and 3 are seizure list witnesses who have been supported the prosecution case regarding search and seizure. P.W. 2 has stated sample was taken at the police station and other witnesses at the police station. It is submitted that prosecution has not been able to prove the charges.

6. Learned counsel for the State however submits that arms have been recovered from the room of the appellant and other psychotropic substances have also been recovered from the house of Verandah of the house of the appellant and same was sent for examination to the Sergeant Major and he reported that arms are effective and on the basis of Forensic Science Laboratory, prosecution has been proved the charges.

7. Now taking into consideration the submission, I proceed the question for consideration whether prosecution has been able to prove the charges.



8. The prosecution case as alleged that on secret information police proceeded and raided the house of Mukti Singh and then found three persons flee away and caught hold of one person who disclosed his name as Pankaj Singh and from his possession one bag Ganja containing 20 K.G. recovered and two persons managed to flee away were Mukti Singh and Rabindra Singh. Thereafter, the police raided the house and from the room of Rabindra found fire arms, gun beneath his bed and cartridges of 12 bore and 24 live cartridges along with other fire arms and also recovered Rs. 1,03,070/-. Further recovered 9 gunny bags of Ganga from the Verandah of the house and seizure list has been prepared which has been marked as Exhibit-1 and seizure list and signature on the seizure list marked as Exhibit-1 series. Thereafter, F.I.R. lodged. On the basis of self statement of the informant, Subhash Baijnathan which is Exhibit-2 and on the basis of said written report F.I.R. lodged.

9. However, P.W. 4 is the informant and has deposed that on secret information, a team constituted and raided the house of Mukti Singh and Pankaj Singh was arrested who was fleeing away and proved his written report on the basis of which F.I.R. lodged and proved formal F.I.R. which is Exhibit-3 and he has also proved seizure list. However, he claimed to have identified the accused. However, he has stated in his cross-examination recovered Ganja

containing in 9 packets from the Verandah and sample was taken before him. However, in his evidence he has stated that where he kept the seized article or to whom he handed over it not remembered nor has mentioned that arms seized were sealed or not. P.W. 1 has also come to depose that raid was made and seizure list prepared with regard to seizure of the arms and Ganja as well as money. However, he has stated that Ganja was not weight and written on the basis of self evaluation. P.W. 2 and 3 are seizure list witnesses, but have not supported the prosecution case regarding seizure. P.W. 5 is Sergeant Major who has come to depose that he examined the arms which contained the pistol .303 and one pistol of .315 and 2 regular guns of 12 bore, 1 air gun, 8 cartridges of .303 and 10 cartridges of .315 and 45 cartridges of 12 bore which have been marked as Exhibit, A, B, C and D respectively. However, in his cross-examination he has stated that arms and ammunition which were not present in court. However, he has stated that material which were received by him were sealed, though, has stated that he has not mentioned about nature of seal. P.W. 6 has proved material Exhibit arms which were seized and said arms and ammunition have been marked as material Exhibit 1 and 1/1 two country made pistols and two regular single Barrel gun and air gun marked as material exhibit II and II/I and II/2 respectively. The 8 live cartridges of .303 and 10 live cartridges of .315 were



produced in the court with marks which were marked as material Exhibits IV to IV/7 and V to V/9. The recovered 40 cartridges of 12 bore gun were marked as material Exhibits VI to VI/39. The gun cleaning rod was marked as Exhibit VII and 3 rubber seals were marked as Exhibit VIII, VIII/1 and VIII/2. Three belt Bindolia two of light green colour and one of black colour marked as Exhibits IX, IX/1 and IX/2 and the rifle charger was marked as Exhibit X 13 packets, out of which 9 was sealed and four were open all containing Ganja were opened in court total weighing 2 quintals, each packet of 20 KG were marked as Exhibit XI to XI/12. One open bag which was not sealed containing cash Rs. 1,03,070/- bearing Malkhana Register Nol. MR 7/10 was marked as material Exhibit-XII. However, in his cross-examination he has stated there is no seal mark on any material exhibit. Arms and ammunitions are also not sealed. He has stated that Ganja was weight and weight was done along with packet.

10. P.W. 7 is the I.O. He has stated that he proceeded for Rangra P.S. at 3 P.M. on 15.07.2010 took up the charge of investigation of Gopalpur (Rangra) P.S. Case No. 168 of 2010 and forwarded Pankaj Singh to judicial custody to the court. During investigation he had sent seized fire arms to the Sergeant Major after obtaining order of S.D.J.M. and obtained report. He has further stated that he sent for prosecution sanction report. He produced seized

Ganja before the District judge and the Ganja was sealed there which was sent to the Forensic Science Laboratory, Patna.

11. However, it is pertinent to mention that it has not been mentioned in the evidence of I.O. when the Ganja was produced before the District Judge to seal it. From perusal of the record, it appears that he produced 10 cartoon of Ganja before the District Judge on 06.09.2010 and Ganja was sealed and sample of which was sent to F.S.L. Patna. However, this witness in his cross-examination stated that in the case diary there is no mentioned about keeping Ganja and arms in the Malkhana or there is no mentioned of taking out said articles from Malkhana. He has also submitted that he has not verified the weight of the seized Ganja. He has further stated it has not mentioned how much quantity of Ganja was taking out for sample to send it to F.S.L. He has further stated that Ganja packet was produced in the court in sealed cover. He has further stated that there is no mentioned in seal mark in the case diary.

12. P.W. 8 is S.D.P.O., Sadar who has come to depose to be a member of the raiding party and recovery of Ganja and arms. However, this witness come to depose that all the packets were sealed and has stated in paragraph 26 of his deposition that he has not mark any seal cover and sample was not taking before him.

13. Hence taking into consideration of this witness who has



deposed that articles were seized and seizure list was prepared and thereafter, F.I.R. lodged on the basis of self statement of Subhash Baidyanathan, there is no mentioned that after seizure of the articles where articles were kept. However, P.W. 4, informant stated that seized Ganja and arms were sealed in packet. Further he has stated that he produced 13 packets, out of 13 packets, 9 sealed and four unsealed all containing Ganja. However, in his cross-examination he has stated that nothing of the material exhibits content in sealed mark, though, he has proved the report regarding his examination of 2 two country made pistols, two regular single barrel guns, one air gun, 8 live cartridges of .303, 10 live cartridges of .315 and 40 cartridges of 12 bore gun. However, the Sergeant Major has been examined as P.W.5 and has proved his report, but has stated in his evidence that articles which were examined by him is not present in court and hence nor proved articles, though, his report has been proved as Exhibit-1.

14. However, from the evidence of the witnesses it is stated that 10 packets of Ganja have been recovered, but it has not been mentioned where those Ganja have been kept. However, Section 52 of the N.D.P.S. Act provides “every person arrested and article seized under warrant issued under sub-section (3) of Sections 41, 42 and 43 shall be forwarded without unnecessary delay to (a) the officer-in-charge of the nearest police station, or to the officer empowered under



section 53 and the authority or officer to whom any person or article is forwarded under sub-section 2 or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article. Section 52A provides that after seizure of psychotropic substances or call of narcotic drugs which shall, as soon as may be disposed of in accordance with law. It further provides that narcotic drug or psychotropic substance has been seized be forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 the officer shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to the description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to sub-section (1) may consider relevant to identify of the narcotic drugs or psychotropic substances shall make an application, to any Magistrate for the purpose of (a) certifying the correctness of the inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of

any list of samples so drawn and where an application is made under sub-section (2), the Magistrate shall as soon as may be, allow the application. Section 55 provides an officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of the police station and which may be delivered to him and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Further Section 57 provides that whenever any person makes any arrest or seizure, under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate superior officer.

15. However, though, witnesses have supported the prosecution about seizure of the articles, but the occurrence took place in between night of 14/15-07-2010. However, the case of the prosecution that 9 bags Ganja were recovered from the house of Mukti Singh and 1 bag of Ganja was recovered from the possession of Pankaj Singh. However, 13 bags of Ganja were produced, out of 13, 9 are sealed and 4 open and as per record Ganja was produced on 06.09.2010 after two months and procedure prescribed under Section



52 and 52A has not been complied. There is not mentioned that in between the period where Ganja were kept. It has not brought in evidence that Ganja was seized were handed over to the officer-in-charge of the police station. Recovered Ganja was not produced before any Magistrate and hence Sections 52 and 52A has not been complied nor there is any certificate by the competent authority or Magistrate, though, it has been stated that sample of Ganja was taken before the District Judge, but neither it has been mentioned where these articles seized were kept from the date of seizure to the date of taking sample nor Malkhana register has been produced to indicate to be kept in safe custody. Though, it is stated that Ganja was sealed, but the seal mark was not there as per evidence of P.W. 5 who produced the articles. Further 10 packets of Ganja were seized but 13 packets of Ganja were produced also cast a serious doubt.

16. Having regard to the fact, though, it is alleged arms were seized and it was sealed thereafter, it was sent to Sergeant Major who after examined found that arms were effective. Though, arms were produced in the court and marked. However, the fire arms seized were not produced in court till the time the Sergeant Major examined in the court. However, at the subsequent stage arms produced in court were not in sealed cover nor at the time of when Sergeant Major was examined the article shown to him in court, though, Sergeant Major

has proved his report, but has stated in his evidence that material exhibit is not present in court. Hence from the evidence of Sergeant Major it has not been proved which arms were produced before him on which he gave report and hence it cannot be stated articles which were seized were produced before the Sergeant Major who examined and give report of these articles which were produced in court after examination of Sergeant Major is not in sealed cover of the Sergeant Major, though, seal bear the mark of A.C.J.M., though, Sergeant Major has stated that he marked on arms produced as mark A.B.C.D on the arms and ammunition. However, there is no reference in A,B,C,D mark when articles were produced before the court. Hence it cannot be said that articles which were seized produced before the Sergeant Major or the fire arms seized were effective as articles seized were not produced in court at the time of deposition of Sergeant Major. Further fact that 10 bags of Ganja were seized and out of ten bags, 9 bags recovered from the house of Mukti Singh and one bag from the possession of Pankaj Singh, but 13 packets of Ganja were produced in the court create doubt that Ganja seized produced in Court. Further it has neither been mentioned where articles were kept bear seal of officer-in-charge of the police station nor Malkhana Register has been placed nor officer-in-charge of the police station has come to depose that where articles were seized. There is neither

compliance of Section 52 and 52A of the N.D.P.S. Act and articles were produced in court 06.09.2010 after two months from the date of its seizure on 15.07.2010, hence cast a serious doubt about seizure or whether sample taken on 06.09.2010. Further 10 packets of Ganja were recovered but 13 packets of Ganja has been produced in court which does not explain how 10 packets became 13 packets. Hence apart from violation of Section 52 and 53s of N.D.P.S. Act, there was 10 packets of Ganja were seized but how it became 13 packets, hence, cast a serious doubt from the prosecution case. F.S.L. report suggests that 10 packets Ganja was received for examination, though, it was found that 10 packets contents psychotropic substance. However, fact that there is violation of Section 52 and 52A of the N.D.P.S. Act. Further there is no explanation where Ganja was kept from the date of occurrence from 15.07.2010 to 16.09.2010 and there is also discrepancy in the evidence of witnesses.

17. Hence taking into consideration the entire facts, I find that prosecution has not been able to prove the charges. Learned Trial Court did not go to the question about evidence of Sergeant Major that articles were produced before him and also did not go into the question where articles were kept and non-compliance of Section 52 and 53 of the N.D.P.S. Act. Further, when there is 10 packets of Ganja recovered but how 13 packets were produced before the court.

Further facts where Ganja was kept and why Malkhana Register has not been produced in court.

18. Accordingly, conviction and sentence recorded by the trial court is set aside and appeal is allowed. The appellant, namely, Ravindra Kumar Singh alias Ravindra Singh, resident of village- Madrauni, P.S. Gopalpur (Rangra), District-Bhagalpur, who is in custody, be set at liberty forthwith, if not required to be detained in any other case.

m.p.
N.A.F.R.

(Gopal Prasad, J)

U		T	
---	--	---	--