

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.41 of 2015

Against the judgment of conviction, dated 31.03.2012, passed by Mr. Saroj Kumar Srivastava, Additional Sessions Judge, V, Muzaffarpur, in D.R.I. No. 4 of 2008

1. Pramod Yadav Son of Late Suresh Prasad Yadav Resident of Village – AND
P.O. - Bhagwanpur, P.S. - Bihpur, District – Bhagalpur Appellant

Versus

1. The Union of India Through D.R.I. Muzaffarpur Respondent

Appearance :

For the Appellant : M/S Praful Chandra Jha & Shyam Lal, Advts.

For the Respondent : Mr. Manoj Kumar Singh, CGC

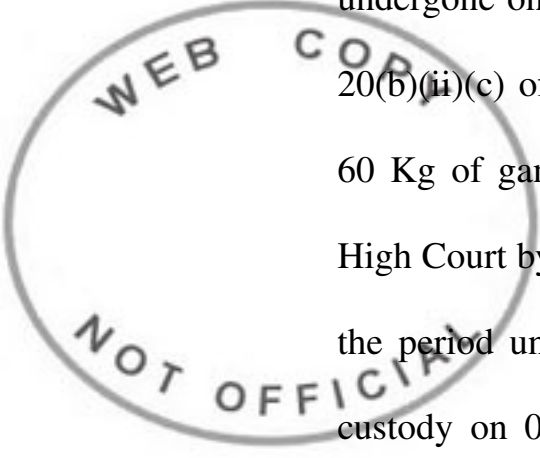
CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 04-09-2015

Heard the learned counsel for the petitioner and the State.

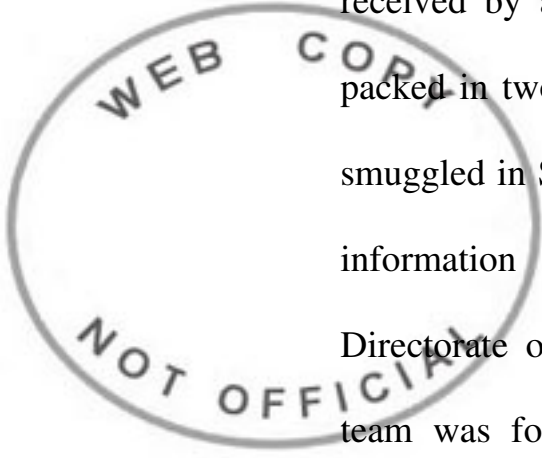
2. This appeal is directed against the orders, dated 31.03.2012 and 17.12.20014, by which the conviction has been recorded under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as, “the Act”) and the appellant has been sentenced to undergo rigorous imprisonment for ten years and, a fine of rupees one lakh and in default of payment of fine to undergo simple imprisonment for two years. However, peculiar situation has arisen in case that the appellant remained convicted under Sections 20(b)(ii)(c), 23 and 29 of the Act, but, he was sentenced by order, dated 31.03.2012, itself, for the period undergone in custody to meet the ends of justice. However, the order of sentence, dated 31.03.2012, by which a sentence of period undergone had been challenge in Government Appeal

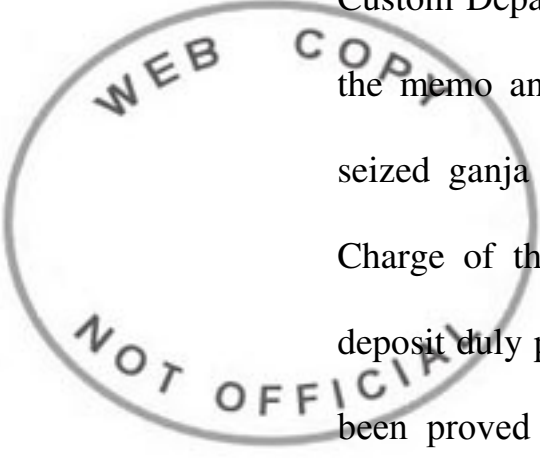


(D.B.) No. 16 of 2013 challenging the order of sentence for the period undergone on the ground that the appellant was convicted under Section 20(b)(ii)(c) of the Act for having been found in his possession carrying 60 Kg of ganja in ten packets, which is commercial quantity and the High Court by order, dated 29.08.2014, set aside the order of sentence for the period undergone on the ground that sole respondent was taken in custody on 07.07.2008 and released by order, dated 31.03.2012 as he remained in custody for less than four years whereas the minimum sentence provided for offence under Section 20(b)(ii)(c) of the Act is ten years with a direction to the sole respondent, i.e., the appellant, to appear before the trial Court on 31.10.2014 when the trial Court shall pass an appropriate order and by virtue of this order, dated 29.08.2014, passed in Government Appeal No. 16 of 2013, the appellant appeared before the trial Court and the trial Court by its order, dated 17.12.2014, sentenced the appellant to undergo rigorous imprisonment for ten years and further in default of payment of fine to undergo simple imprisonment for two years, hence, the appellant has challenged the order of conviction recorded by the order, dated 31.03.2012, passed by the Additional Sessions Judge, V, Muzaffarpur, in D.R.I. No. 4 of 2008, which is under challenge along with the order, dated 17.12.2014.

3. The prosecution case, as alleged in the complaint by the complainant, Shivendra Satyarthi, Intelligence Officer, D.R.I.,

Muzaffarpur, that on 07.07.2008 a secret and specific information was received by a casual informer that consignment of Nepali ganja duly packed in two trolley bags, one hand bag and one cotton bag are being smuggled in Sapt Kranti Express Train, in bogey no. 05279 (S-12). The information was communicated to the Assistant Director of the Directorate of Revenue Intelligence, Patna, and as per his direction a team was formed and rushed to platform no. 3 of Railway Station, Muzaffarpur, along with the witnesses. The officials of Railway Protection Force were also communicated about the information. At about 01.30 hours the said train arrived at platform no. 3 and one suspected person got down from bogey no. 05279 (S-12) along with two trolley bags, one hand bag and one cotton bag and on enquiry said person disclosed his identity as Pramod Yadav and stated that all the four bags contained Nepali ganja, then, in the presence of the Railway Protection Force officials and other witnesses four bags were seized from the bag Nepali ganja was recovered. The said recovered ganja was weighed and found to be 60 Kg in ten packets and the said ganja was seized, seizure list prepared and panchnama was also prepared. Three representative samples were taken from the bags, the articles seized and the representative samples were sealed after taking samples from all packets and three packets of representative samples each containing about 25 grams prepared. The statement of the accused under Section 67 of the



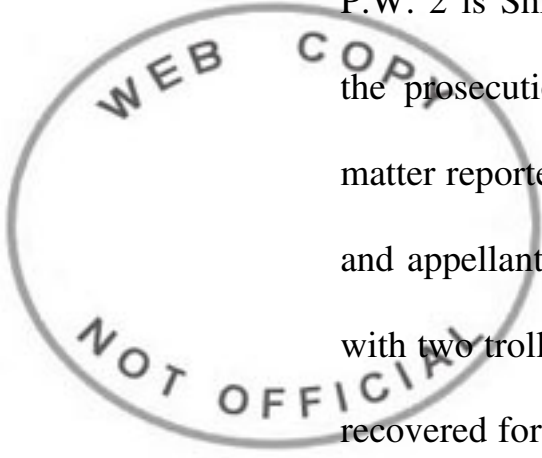


Act was recorded and the seized ganja was kept in the godown of the Custom Department. The secret information received was mentioned in the memo and a copy of the same sent to the senior officers and the seized ganja was handed over to the then Inspector-cum-Godown In-Charge of the Custom Division, Muzaffarpur. The proforma for the deposit duly proved as Exhibit 9, entry in the register no. 18 page 83 has been proved with regard to it's entry, dated 08.07.2008, certification paper that the certificate of Mr. Sandip Mishra, the then Judicial Magistrate, 1st Class, Muzaffarpur, has been proved and marked as Exhibit 11 which bear the signature of Mr. Sandip Mishra and Custom Superintendent, Muzaffarpur, and the then Godown In-Charge, R.P. Singh. The sample was sent to the Chemical Laboratory, Custom House, Kolkata, which was received on 16.07.2008 in the laboratory and a report was received and it responded to the test of ganja. The said report marked as Exhibit 3 and the prosecution report submitted, cognizance taken, charge was framed on 28.04.2011 for offences under Sections 20(b)(ii)(c), 23 and 29 of the Act. However, after framing of the charge, the trial proceeded and altogether seven witnesses examined.

4. P.W. 1 is Indradeo, Havildar, D.R.I., Muzaffarpur and supported the prosecution case about the apprehension of appellant by the team constituted on the railway platform when the appellant got down from Sapt Kranti Express Train, in bogey no. 05279 (S-12) and was

apprehended with two trolley bags, one hand bag and one cotton bag.

P.W. 2 is Shivendra Satyarthi, the complainant. He has also supported the prosecution case regarding the receipt of the information and the matter reported to the senior officer and on his direction team constituted and appellant was apprehended while getting down from the train along with two trolley bags, one hand bag and one cotton bag and Nepali ganja recovered for which the seizure list prepared as well as the representative samples taken and after due formalities the same was kept in the godown of Custom Department, Muzaffarpur. P.W. 3 has also submitted that the samples were taken from all the packets as per his evidence in paragraph 7. P.W. 4 is Babu Lal Paswan, D.R.I., Muzaffarpur, who supported the prosecution case about the raid and recovery of 60 Kg of Nepali ganja in ten packets. P.W. 5 is Ravi Kumar, who has also supported the prosecution case regarding the raid and recovery and apprehension of appellant with four bags containing ganja. P.W. 6 is the Inspector, Railway Protection Force, Motihari, who has also supported the prosecution case regarding recovery of ganja. P.W. 7 is Narendra Kumar, Inspector-cum-Godown In-Charge, Custom, Muzaffarpur, and has proved the proforma in the writing of Shivendra Satyarthi, which is the inventory deposit by Shivendra Satyarthi in the godown. He has also proved godown entry no. 18 at page 83 of the register, dated 08.07.2008, and also proved the certification papers, dated 15.01.2009, at serial no. 18 of



the register mentioning the articles, seized, and certificate of Mr. Sandip Mishra, which has been marked as Exhibit 11 and also the packets which contained 25 grams samples taken from the four bags.

5. The trial Court taking into consideration the evidence of the witnesses convicted the appellant and sentenced as mentioned above.

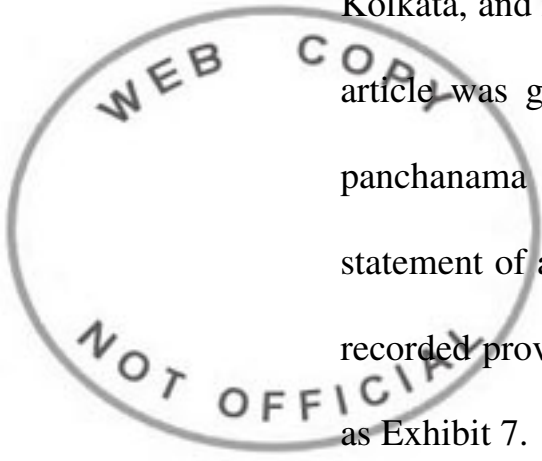
6. The learned counsel for the appellant, however, challenged the order of conviction and sentence, recorded by the trial Court, on the ground that there is non-compliance of Section 50 of the Act as well as Sections 52, 55 and 57 of the Act. It has been contended that the seizure has not been taken before any Magistrate or gazette officer and the right of the appellant to be searched before a Magistrate has not been complied with in form (ii). It has, further, been contended that no photographs of articles, seized, have been taken and the superior officer has not been informed within 48 hours.

7. The learned counsel for the Union of India has submitted that there is no requirement for compliance of Sections 52, 55 and 57 of the Act. It has, further, been submitted that there is no requirement for observation of Section 50 of the Act as the ganja has been recovered from the bag and not from the personal search. It has, further, been contended that the ganja, seized, on 07.07.2008 has been kept in the Custom's godown on 08.07.2008, the very next day, and the representative samples have been taken just at the time of occurrence and seizure list and,

further, there is a certification of Magistrate and the order of destruction has also been passed, hence, it is submitted that there is substantial compliance of Sections 52 and 52A of the Act. It has, further, been submitted that Sections 52 and 57 of the Act are only directory and no prejudice has been shown to have caused to the appellant, hence, the order of conviction and sentence is sustainable and justified.

8. Taking into consideration the respective submissions, I proceed to consider the allegation. The prosecution case, as alleged in the complaint petition, itself, and the prosecution report that a secret information was received by a casual informer that the consignment of Nepali ganja was duly packed in two trolley bags, one hand bad and one cotton bag is being smuggled in Sapt Kranti Express Train, in bogey no. 05279 (S-12) and, thereafter, a team was constituted and raid conducted at platform no. 3 and a person was apprehended with two trolley bags, one hand bad and one cotton bag when the appellant was coming out from the train at the platform and on enquiry he admitted that all four bags contained Nepali ganja. His statement recorded has been marked as Exhibit 6 in which he has admitted that the trolley bags, hand bag and cotton bag, recovered from him have to be handed over to the owner of these articles named Prabhujee and he is not owner of the said articles, but, he has carried the same. P.W. 1 has specifically stated in his evidence that body of the appellant not searched. P.W. 2 has also

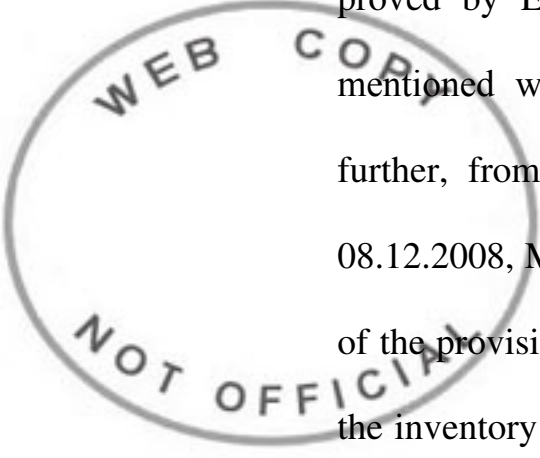
supported about the recovery and sample taken and sent to the C.R.C.L., Kolkata, and report received and in the report it was found that the seized article was ganja. The said report has been proved as Exhibit 3, the panchanama has also been proved as Exhibit 4 and the voluntary statement of accused proved as Exhibit 5 and the interrogatory statement recorded proved as Exhibit 6 and the complaint petition has been proved as Exhibit 7. He has stated that train reached at the Station at about 01.30 P.M. and the seized article was later kept in the godown of the Custom Department. He has, further, stated that the secret information was recorded in the evidence and one copy of the same was sent to the senior officer and the accused has been apprehended under Sections 42 of the Act and not under Section 43 of the Act. More over, there is evidence that the secret information received was mentioned in the memo and a copy of the same sent to the senior officer is substantive compliance of Section 41(1) & (2) of the Act. The recovery has been made while in transit. However it has been stated that the seized article is not before him, but, the certification of the articles kept in godown and certified by the Judicial Magistrate, Mr. Sandip Mishra, has been proved, which has been marked as Exhibit 11 and the proforma is in the writing of P.W. 2 with his signature has been proved as Exhibit 5, which is the inventory deposit by Shivendra Satyarthi and R.P. Singh, the then Godown In-Charge-cum-Inspector and the article seized was received by the



Inspector-cum-Godown In-Charge of the Custom Department, Muzaffarpur, on the platform. The godown register has also been proved making entry of the article, seized, and the certification by the Magistrate has also been proved.

9. Hence, having regard to the fact that the team constituted which apprehended the accused and from his possession, in four bags, the article seized, representative samples taken and the weight of the article in four bags was found to be 60 Kg of Nepali ganja which duly kept in the Custom Godown on the very next day in sealed cover and the certification of the Magistrate having been proved as Exhibit 11, hence, there is substantial compliance of Section 52 of the Act, hence, the prosecution case has been able to prove the charges.

10. The learned counsel for the appellant, however, contends that there is no compliance of Section 50 of the Act and neither the seizure was made before the Magistrate nor before a gazetted officer and nor the opportunity was given intimating the right of the accused to be searched before a Magistrate. However, the learned counsel for the appellant has misdirected in making submission in view of the fact that since the recovery has been made from the four bags and not from the person of the accused and there is no personal search, hence, Section 50 of the Act is not attracted and there is no occasion for non-compliance of Section 50 of the Act. Further, when the article, seized, on the very next



day kept in the godown and the said keeping of the article has been proved by Exhibit 9, the proforma in which the article seized was mentioned were kept in sealed cover in the Custom's godown and, further, from the orders sheet, itself, it appears that by order, dated 08.12.2008, Mr. Sandip Mishra, Judicial Magistrate, was deputed in view of the provision of Section 52 of the Act for certifying the correctness of the inventory and the certificate of the Magistrate on the register marked Exhibits 10 and 11, itself, indicates the sufficient compliance of Section 52A of the Act. However, not taking the photographs is no ground to reject or hold that the compliance of Section 52A of the Act has not been complied as Section 52A of the Act is only directory and not mandatory, but, from the perusal of Section 52 of the Act it appears that there is substantial compliance of Section 52 of the Act.

11. The learned counsel for the appellant, however, contends that though it has come in evidence that sample has been taken from all the packets as per the evidence of P.W. 3 and three packets of the sample was prepared, itself, indicates that the sample was taken. However, the attention has been drawn in regard to the evidence of P.W. 6, Inspector of Railway Protection Force, that the sample was taken from only three packets, however, even accepting this evidence that the sample was taken from three packets, since four packets contain 60 Kg of Nepali ganja, then, the three packets must have contain more than commercial quantity

and on the basis of this evidence, itself, the prosecution case can not be rejected.

12. Hence, having regard to the fact that there are sufficient evidence that the articles were recovered and the same was seized, sealed, samples taken, sent to the C.R.C.L., Kolkata, and the report received that the sample are ganja, the prosecution has been able to prove the charges. However, the learned counsel for the appellant submits that there is no compliance of Section 57 of the Act. However, there is evidence that regarding receipt of secret information the same was mentioned in a memo and copy of the same was sent to the senior officer. It is well settled that Section 57 of the Act is only directory and not mandatory and nothing has been shown that any prejudice has been caused to the appellant to interfere with the order of conviction.

13. Hence, I do not find any merit in this appeal. This appeal is **dismissed**.

(Gopal Prasad, J)

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