

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1113 of 2010

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Satan Kumar Yadav, S/o Sri Pundeo Yadav, R/o Village – Chandradahiya, P.O. Chandradahiya, P.S. Motihari Muffassil, District – East Champaran, Bihar.

.... Appellant/s

Versus

Union of India Through the Inspector Custom, Motihari, District – East Champaran.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Prakash Tiwari
		Mr. Anand Tiwari
For the Union of India	:	Mr. Sanjay Kumar, A.S.G.

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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: 10-11-2015

1. Heard learned counsel for the parties.

2. The Appellant has been convicted under sections 20(b) (ii) (c) of the N.D.P.S. Act and sentenced to undergo R.I. for twelve years and fine of Rs. 1,20,000/- and in lieu thereof, four months rigorous imprisonment. He has been further convicted for the offence under Section 23 (c) of the N.D.P.S. Act and sentenced to undergo 12 years imprisonment and fine of Rs. 1,20,000/- and in default of payment of fine to undergo four months imprisonment by the Judgment dated 16.08.2010 and order of sentence dated 19.08.2010 passed by the 1st Additional Sessions Judge-cum-Special Judge, Motihari, East

Champan in N.D.P.S. Case No. 70 of 2008. Both the sentences have been directed to run concurrently.

3. The case of the prosecution, according to the informant Sachidanand Tiwari (P.W.1), Inspector, Custom, Motihari is that on 10.07.2008 when he along with his preventive team was checking the vehicles, they found a commercial Jeep coming from Raxaul side, which was stopped for checking. One of the passengers was carrying a 'Plastic Jhola' in his hand, in which 7 kgs. of Charas in 10 packets was allegedly recovered. The passenger disclosed his name as the Appellant as also that he had purchased the alleged 'Charas' from Birganj, Nepal. Three representatives' samples were drawn, which would be sent for testing he said. On the basis of the statement of the Appellant and the recovery of the incriminating articles, the complaint case was drawn.

4. During trial, the prosecution examined 7 witnesses. P.W. 1, Sachhidanand Tiwari, is the informant, who reiterated that on 10.07.2008 while he was going to Raxaul along with other Custom Officials, he found one man walking on the road and then he stated that he was coming on a Jeep and from his possession one Jhola suspectedly was recovered containing 'Charas', which on testing the suspicion was found correct. He



asked the Driver and the Khalasi of the Jeep to appear as witnesses but they refused, so the Appellant was taken to the Custom Office, Motihari and a seizure list was prepared, which was given to the Appellant as well and such formalities were concluded and relevant documents given to the Appellant. He further stated that on chemical testing, the article was found to be 'Charas'. He further proves some other documents with regard to sending the article for testing. In his cross-examination, he clarified in paragraph-12 that there were 10 packets, out of them, three packets were slightly opened. He drew only one sample and did not see all of them, nor has reproduced the sample of the seal in Court. He further stated that out of three samples, he had sent one sample to Kolkata for testing and one was kept with him and third was given to the Seizing Officer.

5. P.W. 2, Mokhtar Singh was also part of the raiding team, who corroborated the statement of the informant, inasmuch as he stated that they found the Appellant sitting on the Jeep along with 'Jhola' and from that 'Jhola' 7 kgs. of 'Charas' was seized. Everyone came back to the Custom Office. He also did not say anything about how the samples were drawn in regard to the seized articles.

6. P.W.3, Janak Baitha, stated that he along with



Sachhidanand Tiwari (P.W. 1) and Mokhtar Singh (P.W. 2) were checked the same vehicles, in course of which one person with Jhola was found and taken to the Custom Office, Motihari. The incriminating articles were weighed and it was found to be 7 kgs. He was not in a position to explain how many packets were found in the Jhola, but he states that all the packets had been weighed together. He also does not say anything about how the samples had been drawn.

7. P.W.4, Jagdish Kumar Ranjan stated that he along with P.W.1, Sachhidanand Tiwari, P.W.2 Mokhtar Singh and P.W.3 Janak Baitha searched some vehicles, in course of which one person with Jhola was found said to be containing 'Charas' in 10 packets. The driver and the Khalasi were called to appear as witnesses, but they refused. Two independent witnesses appeared, who were also taken to the Custom Office and in their presence, the Appellant gave statement on his interrogation, which is marked as Exhibit-4. He was, thereafter, formally arrested. A seizure list was also prepared and the Appellant was produced before the Court concerned. He also did not say as to how the samples were drawn from the seized articles.

8. P.W. 5, Awadh Kishore is a formal witness, who proves the custody receipt of the seized articles as Exhibit-6. He

stated that on 13.08.2008 the seized 'Charas' was deposited in godown and relevant entries were made.

9. P.W. 6, Jitendra Kumar Singh stated that on the date of occurrence, some vehicles were checked, in course of which, the Appellant was caught with Jhola containing 'Charas' weighing 7 kgs. He then returned his home after the article was weighed. He also stated that the 'Charas' was weighed by P.W.1 in presence of others.

10. P.W.7, Siman Ekka is a formal witness, who proves the certification with regard to the seized articles and he proves the signature of the Judicial Magistrate, which is Exhibit-8.

11. The Appellant examined himself as D.W. 1, who proves Exhibit-E, which was an application to the Court that after his arrest, a confessional statement has been extracted from him.

12. On going through the evidence of the witnesses, we find that no doubt there is positive report that the article recovered was 'Charas' and hence, the Appellant was punishable for violating the provisions of N.D.P.C. Act but we also find that none of the witnesses has given any positive statement with regard to exact name of drawing of samples. P.W.1, Sachhidanand Tiwari, the informant stated in his cross-

examination that out of the 10 packets were recovered, three packets were partially open but three samples were drawn from only one packet. He does not say about mixing of the contents of the three packets nor does he explain as to why individual samples were not drawn from each of the packets, hence, it would be difficult for this Court to conclude that the 'Charas' recovered fell within the commercial quantity. In such circumstances, we convert the conviction of the Appellant under Section 22 (b) of the N.D.P.S. Act and reduce the sentence to the period already undergone by him during trial and waive the quantum of fine.

14. Accordingly, this appeal is dismissed with modification as aforesaid.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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