

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 294 of 2015

Against the judgment of conviction dated 20.04.2015 and order of sentence dated 24.04.2015 passed in N.D.P.S. Case No. 05 of 2012 arising out of Sonapur P.S. Case No. 238 of 2012, G.R. No. 2759/12 by Md. Naimullaha, 1st Additional Sessions Judge, Saran at Chapra

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Rajdeo Singh @ Ranjit Singh, son of Rama Sankar Singh, resident of village Chaitola Sabalpur, P.S. Sonpur, District Saran

.... Appellant

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (SJ) No. 339 of 2015

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Shayam Babu Rai, Son of Late Deenanath Rai, Resident of Sabanlpur, Purani Cahitola, P.S. - Sonapur, District - Saran at Chapra

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 294 of 2015)

For the Appellant : Shri Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Nilesh Kumar, Advocate

For the Respondent : Mr. Bipin Kumar, A.P.P.

(In CR. APP (SJ) No. 339 of 2015)

For the Appellant : Shri S. K. Lal, Advocate
Mr. Pritish Kumar Lal, Advocate

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 15-01-2016

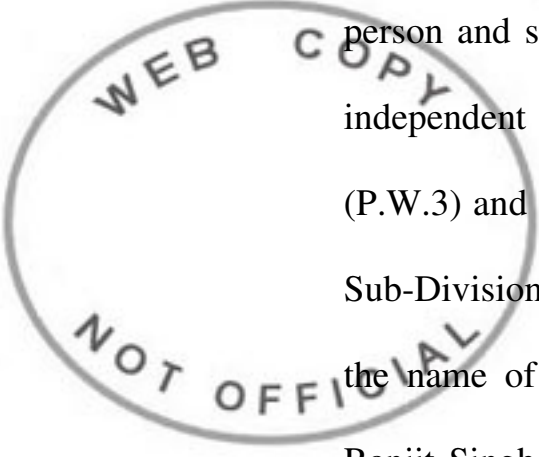
Heard learned counsel for the appellants and the State.

2. As both the appeals arise out of the same judgment of conviction and order of sentence, they have been heard together and are being disposed of by this common judgment.

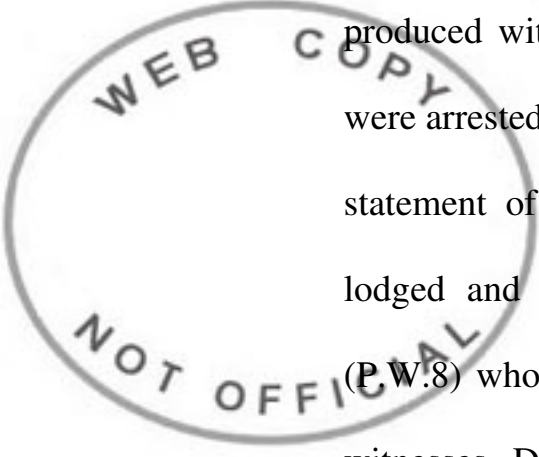
3. The appellants have been convicted under Section

22(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act (for short “the Act”) and sentenced, under judgment and order dated 20.04.2015 and 24.04.2015 respectively, to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.1,00,000/- and in default of payment of fine they shall further undergo simple imprisonment for six months each.

4. The prosecution case, as alleged in the First Information Report by the informant Jai Shankar Singh, Officer-in-Charge of Harihar Nath O.P. is that on 14.06.2012 at 08:30 P.M. he recorded his self statement to the south of village Mahi in front of Meena Bazar, Sonapur in the orchard that on 14.06.2012 at 6:00 P.M. he along with Bihar Home Guard BHG 976 Jiv Nandan Rai, BHG 3451 Bhola Rai, BHG 1186 Nand Kishore Ram, BHG 2736 Mahesh Sah have proceeded from O.P. on evening patrolling by foot. When they reached Meena Bazar at 7:30 P.M., he received secret information that two persons are likely to carry ganja from Mahi. He, immediately, informed this fact to the Sub-Divisional Police Officer, Sonapur, who in response communicated that he was also reaching there and he might proceed. The informant along with the police personnel crossed Mahi village and kept concealed watching the road. At about 7:55 P.M. he saw that two young boys were going, carrying two jute bags on their head towards Sabalpur. Immediately, thereafter, the police party chased them for a



distance about 50 yards near the orchard and informant caught one person and second was caught by the constable Jiv Nandan Rai. Two independent witnesses were brought there, namely, Rajesh Singh (P.W.3) and (Arvind Singh P.W. 2) and before them in presence of the Sub-Divisional Police Officer, Sonapur the informant inquired about the name of the persons apprehended who disclosed their names as Ranjit Singh @ Rajdeo Singh of village Chai Tola, P.S. Sonapur. On search, it was found that a jute bag, containing 3 packets of ganja, which were wrapped in orange colour plastic sheet and tied by Sutali, was recovered. The another accused who was apprehended by Constable Jiv Nandan Rai disclosed his name as Shayam Babu Rai of village Chai Tola, Sabalpur, P.S. Sonapur and when the bag of this accused was opened it was found that the bag contained two packets of ganja wrapped in orange colour plastic and tied by Sutli. From each packets about 250 grams sample was taken for examination and the said sample was also sealed in presence of the independent witnesses. The bag, which was being carried on by them, was containing 5 packets of ganja, each packet weighting 11 Kg. of ganja and as such total 55 Kg. of ganja was recovered. The independent witnesses put their signatures and the Sub-Divisional Police Officer, Sonapur also made his counter signature. The seizure list was prepared and a copy of same was handed over to each of the accused persons, one of signed and other put his

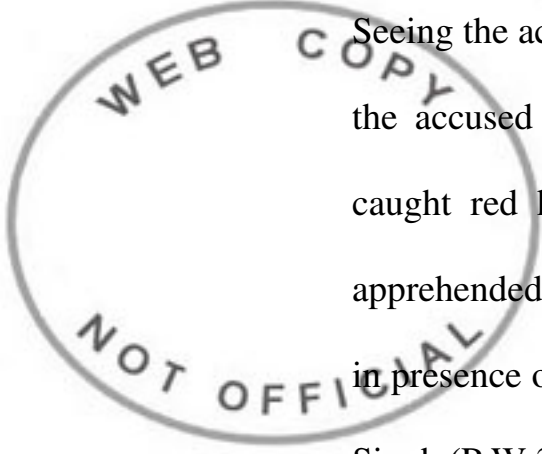


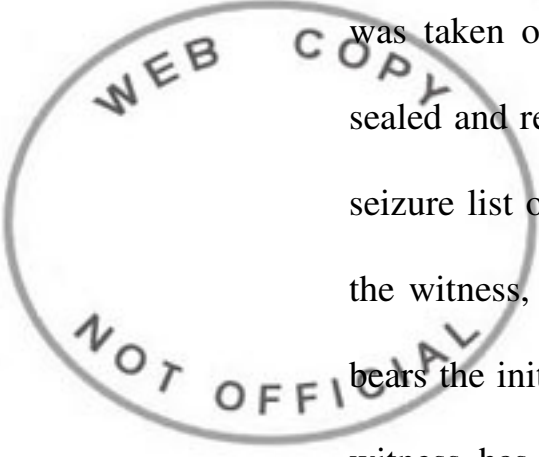
thumb impression on the seizure list. No paper or any licence was produced with regard to the ganja nor did they give any reply. Both were arrested and the case was lodged against them. On the basis of self statement of the informant (P.W.1) a First Information Report was lodged and investigation was handed over to one Kailash Manjhi (P.W.8) who investigated the case and recorded the statements of the witnesses. During investigation P.W.8 took the sample of the seized article and sent to the Forensic Science Laboratory, Patna for chemical examination and thereafter report of the Forensic Science Laboratory was prepared and ultimately charge was framed under Section 22(b)(ii)(c) of the Act and cognizance was taken and thereafter the trial proceeded. During trial 9 witnesses were examined by the prosecution.

5. P.W.1 Jai Shankar Singh, who is informant of this case, has deposed that on 14.06.2012 when he was on patrolling duty in evening along with other police officials and when he reached near Mina Bazar Chowk at 7:30 P.M., he received confidential information that two persons are likely to carry ganja towards Radha Diyara. On receiving this information he informed the Sub-Divisional Police Officer on mobile, whereupon he told the informant that he was also coming immediately there. Thereafter, the informant along with police force reached near the place of occurrence and concealed themselves and at about 7:55 P.M. the informant saw that two persons were coming

carrying some articles in bags on their heads towards Sabalpur way.

Seeing the accused persons, the informant along with police force chased the accused persons and caught hold of them. Out of them one was caught red handed by the informant himself and other accused was apprehended by Constable Jiv Nandan Rai. He has further deposed that in presence of two independent witnesses of the vicinity, namely, Rajesh Singh (P.W.3) and Arvind Singh (P.W.2), the informant along with other Constable got their persons searched. In the meantime, the Sub-Divisional Police Officer, Sonapur reached there and in his presence the informant inquired about the names of the persons, one of whom disclosed his name as Ranjit Singh @ Rajdeo Singh of village Chai Tola, P.S. Sonapur who was carrying a bundle of articles in a bag and when it was opened it was found that the bag contained 3 packets of ganja and all the three packets were wrapped in orange colour plastic and tied by Sutali. The another accused, who was apprehended by Constable Jiv Nandan Rai, disclosed his name as Shayam Babu Rai of village Chai Tola Sabalpur and when the bag of this accused was opened it was found that the bag contained two packets wrapped in orange colour plastic. This witness asked the accused persons whether they wanted to get themselves searched in presence of the Magistrate, upon which accused persons told that they had no objection if the informant made search and seizure and they did not require the presence of any Magistrate for





search and seizure of the 5 packets. Out of the seized articles 250 gram was taken out for sample and kept in small tin box which was duly sealed and remaining quantity of seized articles was also sealed and the seizure list of said articles was prepared. The seizure list was shown to the witness, which he identified, marked as Ext.I. The seizure list also bears the initial of Sub-Divisional Police Officer, Sonapur to which this witness has also identified. The independent witnesses have also put their signatures on the seizure list which have been marked as Exts.2 and 2/1. The witness has further deposed that the seized article was sealed and sample was also sealed, therefore, the informant recorded his self statement as Ext.2 and the informant produced his self statement along with seizure list and two independent witnesses before the Station House Officer and the O/C Sonapur on the basis of self statement registered Sonapur P.S. Case No. 238 of 2012.

6. P.W.2 Arvind Singh is one of those two independent witnesses, who has proved his signature on the seizure list marked as Ext.2. However, he denied that any articles were seized in his presence.

7. P.W.3 Rajesh Kumar Singh is the other independent witness, before whom the seizure list was prepared. He has also proved the signature on the seizure list which has been marked as Ext.2/1. However, in cross-examination, he has also deposed that nothing has been recovered in his presence.

8. P.W.4 Rajesh Singh has deposed that he does not know anything about the occurrence and has been declared hostile by the prosecution.

9. P.W.5 Mithilesh Rai, has also deposed that he does not know anything about the occurrence and has also been declared hostile by the prosecution as he has not supported the prosecution case.

10. P.W.6 Bhola Rai was a member of the raiding party and has supported the prosecution case regarding the search and seizure and the apprehension of the two persons. However, he has deposed that the officer-in-charge of the police station brought them to the police station where the search was made and the sample was taken out weighing about 250 grams. However, this witness, in cross-examination, has deposed that ganja was not weighed before him.

11. P.W.7 Jiv Nandan Rai has supported the prosecution case to the effect that while in the evening patrolling, he received information about coming out of the two persons with ganja and then the persons coming with ganja were apprehended but he further refused to identify the accused persons.

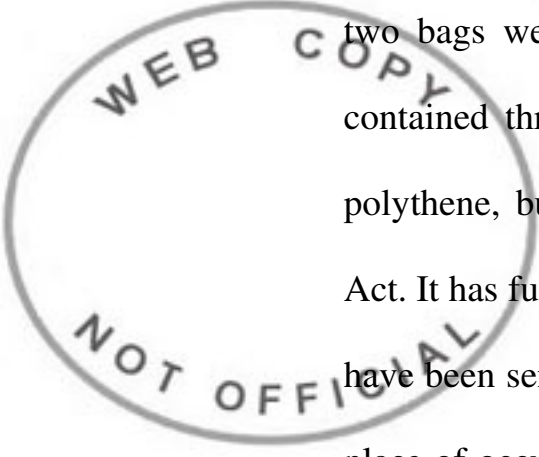
12. P.W.8 Kailash Manjhi is the Investigating Officer who has proved the fardbeyan and has deposed that he has investigated the case and recorded the statement of the witnesses, inspected the place of occurrence and thereafter by the order of the Court sent the sample of

the seized article to the Forensic Science Laboratory for its examination. He has also proved the prayer before the Court for sending the material exhibit and the carbon copy of the same has been proved as Ext.4 in his writing and signature and submitted charge-sheet.

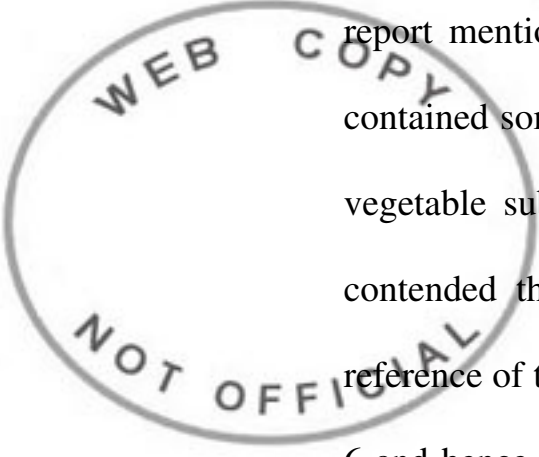
13. P.W.9 Nand Kishors Rai has not supported the prosecution case and has been declared hostile by the prosecution.

14. The trial Court, taking into consideration the evidence of the witnesses, convicted and sentenced the appellants as mentioned above in view of the evidence of the witnesses that the ganja was seized from the possession of the appellants and the same was sent to the police station. Investigating Officer sent the ganja to the Forensic Science Laboratory and the Forensic Science Laboratory report suggests that the sample contained Tetra Hydro Cannabinol (T.H.C.) as there chief intoxicating ingredient, hence, convicted the appellants holding them to have been in possession of ganja in commercial quantity as mentioned above.

15. Learned counsel for the appellants has challenged the judgment of conviction and order of sentence recorded by the trial Court. It has been contended that the seizure list witnesses though have proved their signatures on the seizure list, but have not supported the search and seizure having been done in their presence. It has further been contended that though (P.W.1) the informant has supported the



prosecution case regarding the apprehension of the accused persons and two bags were recovered from the possession of the appellants one contained three packets and other contained two packets wrapped in polythene, but there is non-compliance of Sections 42 and 50 of the Act. It has further been contended that though the seized ganja is said to have been sent to the police station after having duly been sealed at the place of occurrence itself, but this part of evidence of the informant is in contraction to the evidence of P.W.6 that the seized article was brought to the police station and there the sample was taken out from the article for examination and the sample was not taken at the place of occurrence. It has further been contended that in his evidence, P.W.1 in examination in chief stated that ganja was sealed at the place of occurrence and sample was taken and sealed there. However, he has deposed that he does not remember whether the sample was sealed or not. It has further been contented that though P.W.1 in his evidence has stated that sample was taken out from five bags before the independent witnesses and the total sample taken out weighed about 250 grams and sealed in one packet (Dibba). However, the Investigating Officer has mentioned that he sent the sealed packets, but the report of Forensic Science Laboratory shows that the sample received vide memo No.876/12 dated 22.07.2012 contained one wooden box through the messenger P.S.I., Kailash Manjhi on 25.07.2012 in connection with



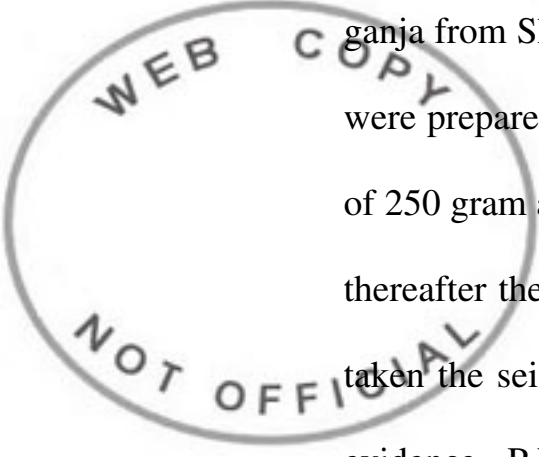
Sonepur P.S. Case No. 238 of 2012 which was duly sealed, but in the report mentioned that the two plastic containers marked as A and B contained some distinct pressed greenish brown, flowering and fruiting vegetable substances which were found to be ganja and hence, it is contended that the sample was sent in one packet and there is no reference of two plastic containers sealed in the evidence of P.Ws.1 and 6 and hence, it casts a doubt regarding the seized articles contained in two plastic containers to be the sample of the seized articles and further there is non-compliance of Section 52A of the Act regarding the certification of the articles seized before the Magistrate nor is there any certification by a Magistrate even the sample was not taken before the Magistrate nor was sealed and specifically there is no reference of sample having been given in two sealed plastic containers and there is no evidence that the sample was sent in two plastic containers. Learned counsel for the appellants, further contended that the Forensic Science Laboratory report has been marked as Ext.5 under Section 293 Cr.P.C., but there is no proof that Ext.5 under the signature by the Senior Officer of the Forensic Science Laboratory, Patna was notified under Section 293 Cr.P.C.

16. Learned counsel for the State, however, contended that the prosecution has proved the case as the articles were seized by the informant before the two independent witnesses Rajesh Singh (P.W.3)

and Arvind Singh (P.W.2), both of whom had proved their signatures on the seizure lists which have been marked as Ext.2 and 2/1 and the articles and sample were sealed at the place of occurrence and the same were sent to the Forensic Science Laboratory and the report of the analyst shows that the articles seized were ganja and seized ganja was of commercial quantity hence, the prosecution has been able to prove the charge beyond all reasonable doubts.

17. Having regard to the respective submissions, I proceed to consider the evidence of the witnesses in the light of submissions made by the learned counsel for the parties.

18. However, taking into consideration the prosecution case recorded on the self statement of the informant, it appears that while the informant was on patrolling duty he received a secret information that two persons were coming along with the ganja and likely to pass Mahi village and then the informant informed the Sub-Divisional Police Officer, Sonapur regarding the information and kept vigil by concealing himself for the two persons and thereafter when he saw two persons coming with the gunny bags on their heads then they chased and caught hold of them, who disclosed their names as Shayam Babu Rai as well as Rajdeo Singh @ Ranjit Singh and then in presence of the two independent witnesses Rajesh Singh (P.W.3) and Arvind Singh (P.W.2), search was made and 3 packets were recovered in the jute bag



from the possession of Rajdeo Singh @ Ranjit Singh and two packets ganja from Shayam Babu Rai were recovered for which the seizure lists were prepared and sample was taken out from the 5 packets to the tune of 250 gram and each packet weighed about 11 Kg. i.e. total 55 Kg. and thereafter the signature and thumb impression of the two accused were taken the seizure lists have been marked as Ext.2 and 2/1. During the evidence, P.W.1 has supported the prosecution case regarding the apprehension of the two accused persons on the said secret information and recovery while they were vigilant and the seizure lists prepared. The signatures of the independent witnesses have been taken and even the signature of one accused and thumb impression of another accused were taken on the seizure lists.

19. However, the submission is that there is non-compliance of Section 42 of the Act. The persons were apprehended while they were in transit and information received by the informant while he was on patrolling duty and hence, Section 42 of the Act is not applicable, but Section 43 of the Act is applicable as the persons were apprehended, and search and seizure were made in the public place while the articles seized were in transit being taken away by the two accused persons and hence, there is no application of Section 42 of the Act.

20. However, so far as non-compliance of Section 50 of the

Act is concerned, it is applicable when there is personal search.

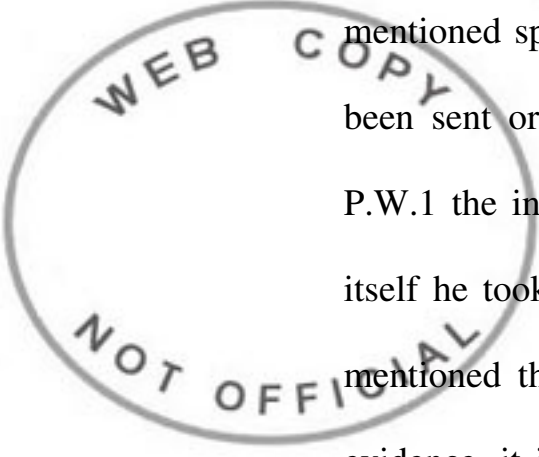
However, there is no evidence at all or material brought on record shows that any personal search of the accused persons was done hence, Section 50 of the Act has no application. However, after search and seizure the evidence of P.W.1 shows that the search and seizure were made at the spot itself and the seizure was taken at the place of occurrence itself and both were sealed at the place of occurrence itself and were sent to the police station and the persons were taken to the police station.

21. However, the argument advanced by the learned counsel for the appellants is that the evidence of P.W.6 is in contradiction to the evidence of P.W.1 to the extent that after apprehension the accused persons were brought to the police station and no search was made at the spot rather they were brought at the place of occurrence and at the place of occurrence 250 grams sample were taken out. However, P.W.6 in cross-examination stated that ganja was not weighed before him and the seizure lists were prepared at the Police Station.

22. However, the contradiction, pointed out by the learned counsel for the appellants, is not of much significance. The evidence of the informant P.W.1 stands corroborated by the fardbeyan. However, in the First Information Report, itself there is specific mention that the accused persons were apprehended and the seizure list was prepared

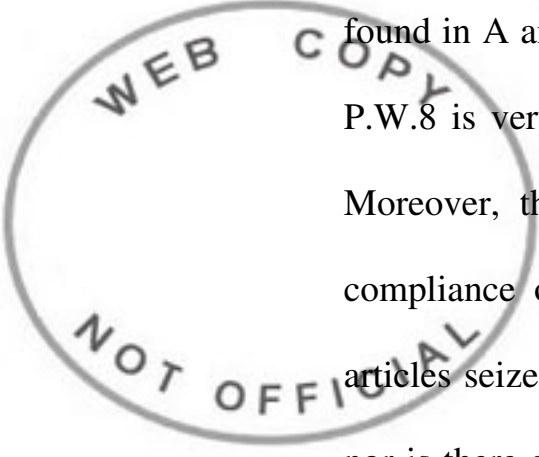
and their signature and thumb impression were taken on the seizure lists. This itself indicates that the accused persons were searched and lists were prepared.

23. However, now the only question for consideration is whether the sample taken from the seized article was sent to the Forensic Science Laboratory. The Investigating Officer deposed that by order of the Court he took the sample and sent it to the Forensic Science Laboratory for examination and he has stated that he had given a petition in this regard in the Court of learned Sessions Judge and the said petition has been marked as Ext.4. However, the content of the petition mentioned that two persons were caught and ganja seized, seizure list prepared before the two witnesses and as per the seizure list the sample of the seized article is being sealed in a wooden box being sent for chemical examination hence, it is evident that the Investigating Officer has not taken the sample himself from the seized article. The said petition Ext.4 itself indicates that neither the sample sealed before the two witnesses of seizure list was in wooden box at the time of patrolling on the basis of secret information S.I. Jai Shankar Singh (P.W.1) apprehended two persons with ganja (cannabis plant). However, the evidence of P.W.8 the Investigating Officer shows that on the order of the Court, he took the sample of the seized article for sending it to the Forensic Science Laboratory. However, he has not



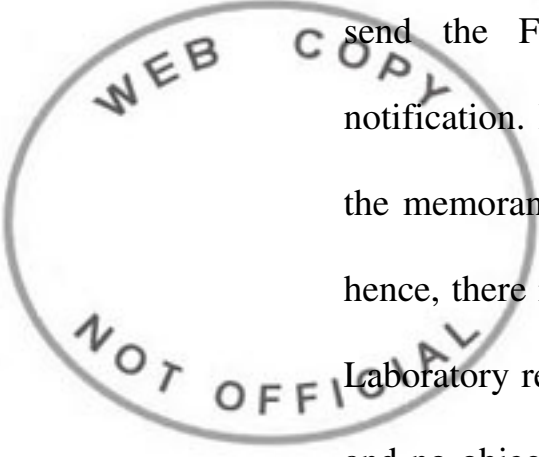
mentioned in his evidence as to how he took the sample. He has not mentioned specifically whether the sample taken by the informant has been sent or he himself took the sample from each packet. Though P.W.1 the informant has stated that at the time of search and seizure itself he took ganja from each packet and sealed in a packet. He has mentioned that the ganja was sealed in two packets and as per his evidence, it is specific that out of the five bags seized in the case he took small quantity from each about 250 grams and kept in a packet (dabba) and sealed and hence, from the evidence of P.W.1 it is apparent that he sent only one sealed packet and the evidence of P.W.8 the Investigating Officer shows that he sent the sealed ganja. However, there is no mention in the evidence of P.W.8 or P.W.1 that the sample sent was in two packets. However, the Forensic Science Laboratory report indicates that two plastic containers, marked as A and B, contained ganja.

24. However, there is no explanation given by the learned counsel for the State as to how the two packets were found or the two plastic containers were found when there is no mention in evidence of either P.W.1 or 8 that the sample taken from the seized articles were sent in plastic containers rather the evidence of P.W.1 is specific that the sample was sealed in one packet and there is no evidence of P.W.8 that sample was taken from the seized articles in the two packets and



this casts a serious doubt about the fact whether the samples tested or found in A and B, were samples of the seized articles. The evidence of P.W.8 is very cryptic and not specific as to how he took the sample. Moreover, there is no mention in the entire evidence that there is compliance of Section 52A neither is there any certification of the articles seized by a Magistrate as enshrined in Section 52A of the Act nor is there a certification of a Magistrate regarding the correctness of the inventory prepared nor is there any inventory prepared about the narcotics drugs containing details of the their description, quantity, quality, mode of packing, marks, numbers and other particulars nor was any application made before the Magistrate for the purpose of certification of the correctness of the inventory nor was the sample taken in presence of the Magistrate nor is there any evidence that the representative samples were taken in presence of such Magistrate except that the sample was sent by the order of the court concerned. However, there is no mention that said sample was taken in presence of a Magistrate, certifying the correctness of the list or sample so drawn nor is there any mention that the articles seized were sealed with the officer-in-charge of the police station nor is there any compliance of Section 57 of the Act though the full report about the search and seizure was sent to the immediate superior.

25. However, the point raised by the learned counsel for the



appellants is that the Senior Scientific Officer was not authorized to send the Forensic Science Laboratory report and there is no notification. However, no such point was ever raised or even taken in the memorandum of appeal and has been raised for the first time and hence, there is no merit in the submission though the Forensic Science Laboratory report has been marked as Ext.5 under Section 293 Cr.P.C. and no objection was raised by the accused persons either at the stage of trial or even in their memo of appeal to challenge the Ext.5 and hence, any submission made by the learned counsel for the appellants regarding the marking of Ext.5 under Section 293 Cr.P.C. or the objection raised that the Senior Scientific Officer has not been notified under Section 293 Cr.P.C. However, the objection raised at the time of hearing is not permissible or to be allowed.

26. However, having regard to the fact that there is no evidence that the sample taken from the possession of the appellants and the evidence adduced that sample was sealed in one packet but the report itself indicates that two plastic containers, marked A and B, contained the seized articles is not in consonance with the evidence adduced by the prosecution that the sample was sent in two packets and hence, it casts a doubt on the prosecution case whether the sample found to be Ganja was the report of sample taken and sent from the seized article and hence, the appellants are entitled to get benefit of

doubt. Therefore, I give the appellants benefit of doubt beyond all reasonable doubts. Hence, I find and hold that the prosecution has not been able to prove the charges against the appellants beyond all reasonable doubts and judgment of conviction dated 20.04.2015 and order of sentence dated 24.04.2015 passed in N.D.P.S. Case No. 05 of 2012 arising out of Sonapur P.S. Case No. 238 of 2012, C.R. No. 2759/12 by Md. Naimullaha, 1st Additional Sessions Judge, Saran at Chapra are hereby set aside and both the appeals are allowed. Let appellant of Cr. Appeal (SJ) No. 294 of 2015 Rajdeo Singh @ Ranjit Singh and appellant of Cr. Appeal (SJ) No. 339 of 2015 Shayam Babu Rai who are in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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