

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 503 of 2015

Against the judgment of conviction dated 27.06.2015 and order of sentence dated 03.07.2015 passed in N.D.P.S. Case No. 65 of 2012/Tr. No. 14 of 2012 by Sri Anand Singh, learned 1st Additional Sessions Judge, East Champaran, Motihari-cum-Special Judge, N.D.P.S., Motihari

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Ram Narayan Sah, Son of Mansi Sah, Resident of Village - Sirisiya, P.S. Adapur (Nakardei), District - East Champaran

.... Appellant

Versus

The Union of India through Intelligence Officer, Patna

.... Respondent

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Appearance :

For the Appellant : Mr. Mukund Mohan Jha, Advocate

For the Union of India : Mr. Anshuman Singh, Advocate

Mr. Priya Gupta, Advocate

Ms. Radhika Agrawal, Advocate

Mr. Ram Krishna, Advocate

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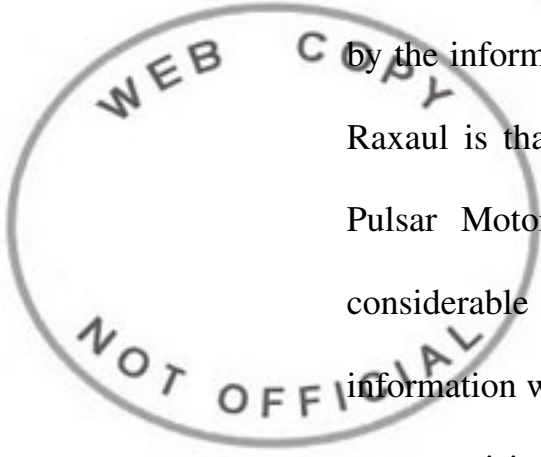
CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

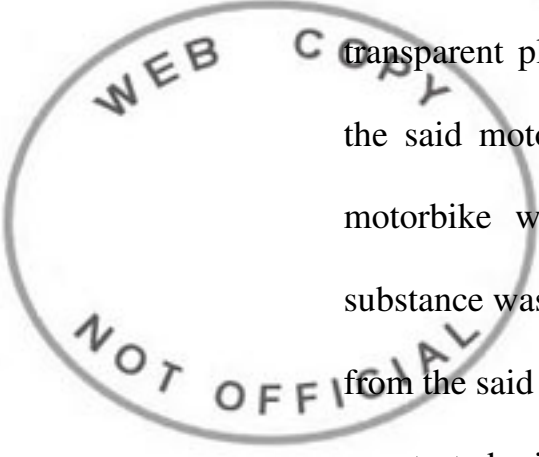
C. A. V. JUDGMENT

Date: 30-06-2016

The appellant has been convicted for the offences under Sections 21(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the “Act”) and sentenced to undergo rigorous imprisonment for eight years with a fine of Rs.50,000/- and in default of payment of fine to undergo rigorous imprisonment for six months for the offence under Section 21(b) of the Act and has further been sentenced to undergo rigorous imprisonment for eight years with a fine of Rs.50,000/- and in default of payment of fine to undergo rigorous imprisonment for six months for the offence under Section 29 of the Act. However, both the sentences have been ordered to run concurrently.

2. The prosecution case, as alleged in the complaint petition filed by the informant, Shailesh Kumar (P.W.5) D coy, 13th BN., SSB, Pantoka, Raxaul is that he received intelligence information that a black coloured Pulsar Motorbike bearing Registration No. BRO-5F-6327 is carrying considerable amount of Heroin from Raxaul to Birganj, Nepal. The information was communicated to his superior and a team of NCB Officials comprising of Vijay Bahadur (P.W.3), Manoj Shankar (P.W.1), Gyan Prakash (P.W.2) all Intelligence Officer of NCB, Patna Zonal Unit, Havaldar R.C. Hembram and Driver B.N. Dinda proceeded for a discrete investigation and had reached at the place of occurrence and on 20.06.2012 at about 2:30 P.M. the information was communicated to the Superintendent, NCB, Patna Zonal Unit, who consented and ordered to work out and thereafter the NCB Team jointly with the SSB Team moved to the said spot and about 4:00 P.M. the said motorbike driven by a man was intercepted near Mai Ka Asthan, Ward No. 13, Raxaul. Thereafter the Officers contacted two persons passing nearby, on asking both the persons disclosed their identity as Deepak Pandit (not examined) and Kanhaiya Das (not examined). Thereafter the Officers disclosed their identity and communicated the secret information they had and requested both the persons to remain present as independent witnesses during the search, which they accepted. Thereafter in presence of the independent witnesses, the intercepted person disclosed his identity as Ram Narayan Sah. He was given option under Section 50 of the Act for search before a Magistrate or a

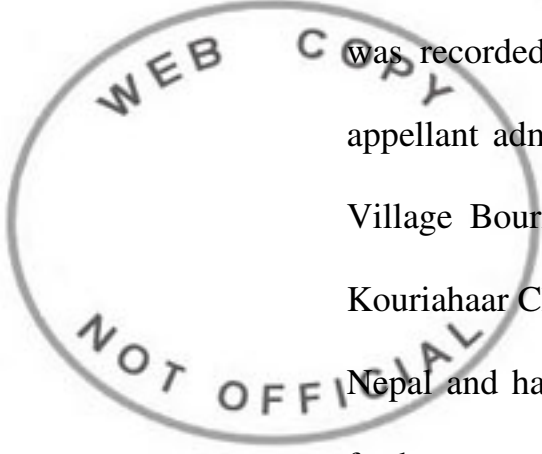




Gazetted Officer, but the said person admitted possession of Heroin in a transparent plastic concealed in space between speedometer and wizer of the said motorbike. Thereafter in presence of the independent witnesses motorbike was physically searched and a brown coloured semi-solid substance was recovered from the space between the speedometer and wizer from the said Pulsar Motorbike. A small quantity of the recovered substance was tested with the drug detection test kit which responded positive to the test of Heroin and in the presence of the two independent witnesses total quantity of the recovered substance was weighed and found to be approximately 200 grams. The two samples of 05-05 grams each were drawn from the substance recovered and kept in two separate polythene packets, heat sealed and were placed in two separate paper envelopes marked as S-1 (Ext.13) and S-2 (Ext.13A) which were sealed with the departmental seal and signed by the Seizing Officer and two independent witnesses and the accused. The rest 190 grams of the recovered substance was heat sealed in transparent polythene packet and was put in a paper envelope and sealed by the department seal which was signed by the Seizing Officer and the two independent witnesses and the owner of the goods Ram Narayan Sah (appellant). The search-cum-seizure list was prepared obtaining signatures of the owner of the goods, two independent witnesses, Inspector Shailesh Kumar and the Seizing Officer on spot. A copy of the search-cum-seizure list was given to the accused-appellant.

The further case is that a notice under Section 67 of the

Act was served upon the appellant. The voluntary statement of the appellant was recorded under Section 67 of the Act on 20.06.2012 in which the appellant admitted his guilt and stated that one Vinod Yadav, resident of Village Bouria, Nepal had handed over the recovered Heroin to him at Kouriahaar Chowk, Raxaul to take the same to Ghantaghar Chowk, Birganj, Nepal and hand over the recovered Heroin to the said Vinod Yadav. The further case of the prosecution in the complaint is that the appellant on voluntary confessional statement under Section 67 of the Act admitted his guilt and was arrested on 20.06.2012 at 22:00 hours. The appellant along with seized materials were produced before the Sessions Judge-cum-Special Judge, under N.D.P.S. Act, 1985, Motihari on 21.06.2012, who remanded the accused to the judicial custody and by order of the Sessions Judge-cum-Special Judge, NDPS Act, Motihari on 21.06.2012 the sealed packet of sample marked as S-1 along with test memo in duplicate was sent to the Opium and Alkaloid Factory, Gazipur, U.P. for chemical examination on 22.06.2012. However, the Opium and Alkaloid Factory, Gazipur, U.P., returned the sample S-1 of seized drug and intimated the NCB, Patna Zonal Unit that the State of Bihar falls under the jurisdiction of the CRCL, Kolkata and accordingly, the sample S-1 was dispatched to CRCL, Kolkata for chemical examination. The remaining 190 grams of sealed Heroin and sealed packet of sample marked as S-2 were deposited in Malkhana of NCB, Patna. Report of the search, seizure and arrest was furnished to higher authorities under Section 57 of the Act and consequently complaint was

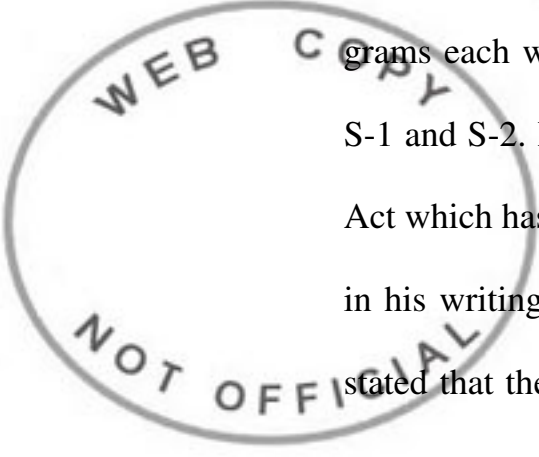


filed.

3. On the basis of complaint, cognizance was taken and after framing of charge, trial proceeded. During trial, six witnesses were examined who are P.W.1 Manoj Shankar, Intelligence Officer, N.C.B., Patna, P.W.2 Gyan Prakash, Intelligence Officer, N.C.B., Patna, P.W.3 Vijay Bahadur, Intelligence Officer, N.C.B., Patna, P.W.4 Rohit Srivastava, Intelligence Officer, N.C.B., Patna, P.W.5 Shailesh Kumar, Inspector, SBB, D-Company 13th Battalion, Seema Shastra Bal, Pantoka, Raxaul, East Champaran and P.W.6 Debashish Choudhary.

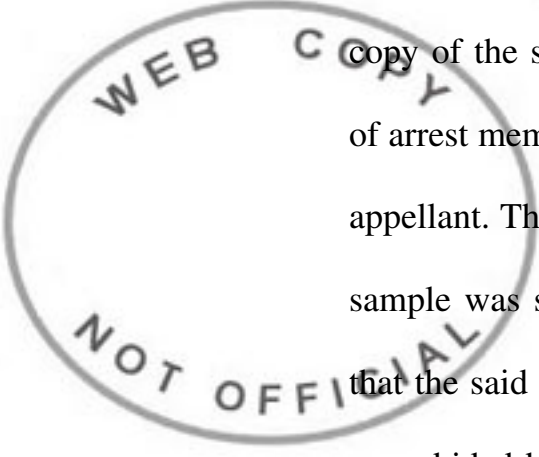
4. P.W.1 supported the prosecution case regarding the information received about smuggling of Heroin by motorbike and so he constituted a team as per the information. They apprehended one person with motorbike bearing No. BR0-5F-6327 and in presence of two independent witnesses Deepak Pandit and Kanhaiya Das the apprehended person disclosed his name as Ram Narayan Sah (appellant) and provided notice under Section 50 of the Act and in their presence the material recovered in between speedometer and wizer and the same was seized and has proved the seizure list marked as Ext.1. He has further deposed that statement under Section 67 of the Act taken after due notice.

5. P.W.2 supported the prosecution case regarding the apprehension of Pulsor Motorbike by the joint team in which he was a member and recovery of substance and further provided notice under Section 50 of the Act to the appellant and after recovery of Heroin in



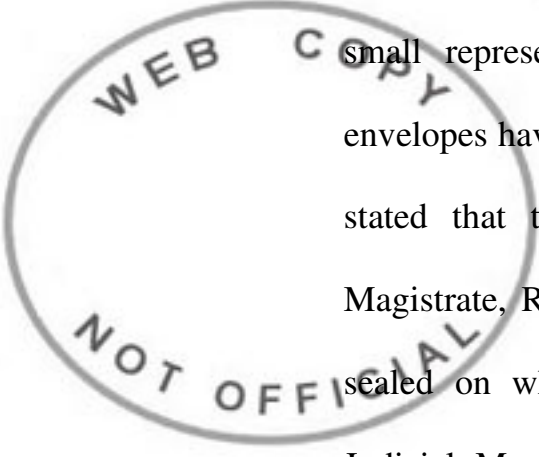
polythene packet containing 200 grams out of which two samples of 05 grams each were taken and 190 grams were sealed which were marked as S-1 and S-2. He has proved the statement recorded under Section 67 of the Act which has been marked as Ext.2 and has proved the said statement to be in his writing bearing signature of the accused. However, this witness has stated that the accused was searched after arrest and no narcotic substance was recovered from the personal search of the body, but only those articles recovered which were given to him by the prosecution.

6. P.W.3 is member of the team and he proceeded on secret information and reached at the spot at 14:30 hours and thereafter, on information a permission was sought by the informant Shailesh Kumar (P.W.5) and thereafter a person, found coming on the motorbike, was apprehended and from motorbike 200 grams Heroin were recovered. He has also deposed that the appellant was made aware of his right under Section 50 of the Act regarding the search before a Magistrate or Gazetted Officer and though personal search was also made. The sample was taken and sent to CRCL, Kolkata. A sample was taken from the seized articles in two envelopes which were sealed. He has deposed that the appellant disclosed that the said Heroin was handed over to him by one Binod Yadav in Raxaul and was asked to carry it to Birganj, Nepal where said Binod Yadav would again take it and further disclosed that for transporting articles from Raxaul to Birganj he would get Rs.1,000/-. He has further stated that the seized articles have been kept in NCB Godown and he



further stated that statement was recorded under Section 67 of the Act and a copy of the search-cum-seizure was handed over to the appellant. A copy of arrest memo, notice under Section 50 of the Act was also provided to the appellant. The sample S-1 was sent to Gazipur, U.P. and thereafter the said sample was sent to CRCL, Kolkata and from there a report was received that the said sample was Heroin. A procedure under Section 57 of the Act was abided by. He has proved the notice under Section 50 of the Act and the original copy was handed over to the appellant. The notice has been marked as Ext.5. He has also proved the carbon copy of the notice under Section 50 of the Act. He has proved the notice under Section 67 of the Act handed over to appellant which bears the signature of both the independent witnesses and the accused marked as Ext.6. He has further proved that Deepak Pandit was noticed under Section 67 of the Act and has proved the carbon copy of the said notice marked as Ext.7. The independent witness Kanhaiya Das was also noticed under Section 67 of the Act marked as Ext.8. The statements of the accused and the two independent witnesses were recorded under Section 67 of the Act and copy of the arrest memo was handed over to the accused marked as Ext.9 and search-cum-seizure list has earlier been marked as Ext.1

7. P.W.4 the complainant has proved the complaint petition marked as Ext.11. He has proved the paper of certification marked as Ext.12 bearing signature of the witness Superintendent, Vikash Kumar and Rajiv Kumar Bharti, Judicial Magistrate, 1st Class, Motihari. He has further



stated that in a close sealed envelope sample no. 2, remnant sample and small representative sample JMM5 has been filed and all the three envelopes have been procured from MCB, Malkhana, Patna. He has further stated that the representative sample was drawn before the Judicial Magistrate, R.K. Bharti, Motihari and the same was put in envelope and sealed on which there is signature of Superintendent, Vikash Kumar, Judicial Magistrate, R.K. Bharti on the envelope with endorsement of representative samples containing 05 grams sample of Heroin which was seized from the possession of the accused and envelope was marked as “X” for identification on small sealed envelope. There is signature of Bijay Bahadur, Seizing Officer and has been marked as 13 and 13/A and envelope has been marked for identification as “Z” for identification. He has proved the signature of Superintendent, NCB, Patna Vikash Kumar and the signature of the Judicial Magistrate R.K. Bharti marked as Ext.14. In cross-examination, he has stated that he prepared these envelopes and he had not given any demand letter. He has further stated that the godown in charge had also not given any forwarding note for producing the said envelope. He has further stated that he has not opened those envelopes.

8. P.W.5 deposed that on the date of occurrence at about 3:30 p.m. a team of NCB headed by Bijay Bahadur along with three Officers, one Havildar and driver approached him and informed about smuggling of Heroin from Raxaul to Birganj. On the said information, the in charge of the NCB Bijay Bahadur sought permission from his Senior Officer and

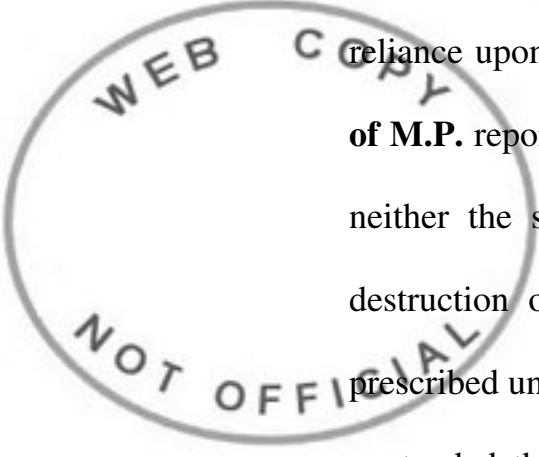
P.W.5 also sought permission from his Commandant, SSB and both gave the information to the Superior Officer and both teams proceeded towards Mai Ka Asthan as communicated by the informant and then at 4:00 P.M. the said motorbike was apprehended and thereafter search and seizure was made in compliance to Section 50 of the Act after providing the notice under Section 50 of the Act regarding his right of being searched before the Gazetted Officer or the process and thereafter in compliance with Section 50 of the Act the search was made and recovery of .200 grams heroin and two samples were prepared each containing 05 grams.

9. P.W.6 deposed that he recorded the voluntary statement of the accused/appellant under Section 67 of the Act in which he has stated that he has purchased the motorbike from one Dular Chand and also disclosed his address and then notice was issued to Dular Chand under Section 67 of the Act and he has not recorded the statement in two copies in same carbon process and signed on the original. However, he has deposed that the carbon copy has been proved as prepared in same carbon copy process marked as Ext.16. He has also stated that a notice was issued to Dular Chand and the notice has been marked as Ext.17. He has stated that Dular Chand has signed a written statement in which there was affidavit regarding the seal of motorbike and his statement that he sold the motorbike for Rs.50,000/- and he has proved the reply of Dular Chand Yadav marked as Ext.18. He has further stated that Dular Chand has also sent by post his written reply in which there is endorsement of Superintendent Vikas Kumar marked as

Ext.19 and he came to a conclusion that on the date of occurrence the owner of the vehicle was the appellant.

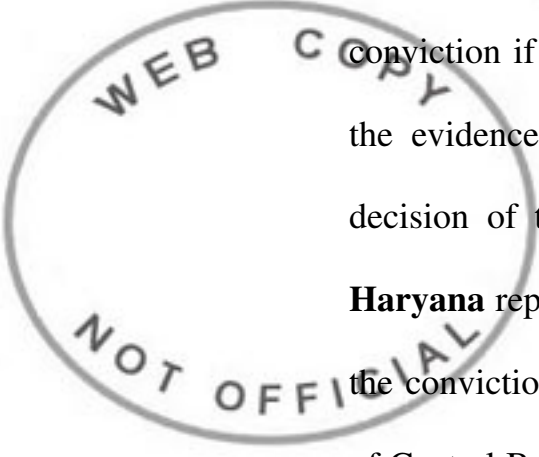
10. The trial Court taking into consideration the evidence of the witnesses regarding the recovery of Heroin from possession of the appellant as well as report of the CRCL, Kolkata that sample of the seized articles found to be positive test of Heroin, Morphine and other opium Alkaloids and consequently the trial Court convicted and sentenced the appellant as mentioned above finding the fact that the witnesses have supported the prosecution case and the accused voluntarily confessed his guilt before the NCB Officers, Narcotics Control Bureau of Research and further the voluntary statement of the accused and reply of Dular Chand Yadav, the owner of the motorbike used in the crime that he has sold the motorbike to the appellant and the appellant was found in possession of the motorbike from whom Heroin was recovered.

11. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the trial Court on the ground that the two independent witnesses, who were the witnesses of search and seizure, have not been examined in the case and no reason has been assigned for non-examination of the two witnesses as witnesses. It has been contended that the seized Heroin has not been produced in Court as a material evidence and hence, the best evidence regarding the possession of the heroin from the appellant has been withheld and mere oral evidence as to their feature and production of Panchnama or search or seizure list does



not discharge the heavy burden lying on the prosecution and has placed reliance upon the decision in the case of **Jitendra and another Vs. State of M.P.** reported in **(2004) 10 SCC 562**. It has further been contended that neither the seized articles have been produced nor the certification or destruction of the seized articles have been proved nor the procedure prescribed under Section 52A of the Act has been followed. It has also been contended that the representative sample has been drawn on 12.07.2013 before the Judicial Magistrate but the sample has been sent on 20.06.2012. It has further been contended that Officers of the Custom Department are vested with the power of the Station House Officer and shall be deemed to be the Police Officer for the said purpose under Section 25 of the Evidence Act, shall be applicable and has placed reliance upon the decision of the Apex Court in the case of **Noor Aga Vs. State of Punjab and Another** reported in **(2008) 16 SCC 417** hence, submitted that confession is not admissible in evidence. It has further been submitted that retracted confession cannot be the sole basis for recording conviction when there is no reliable evidence regarding the possession of the alleged seized articles as neither the possession of the articles seized has been established by cogent, reliable and unimpeachable evidence nor the confession is worth of reliance neither the confession is admissible in evidence or worthy of reliance to record a conviction.

12. Learned counsel for the Union of India, however, contended that the testimony of official witnesses even in absence of its corroboration



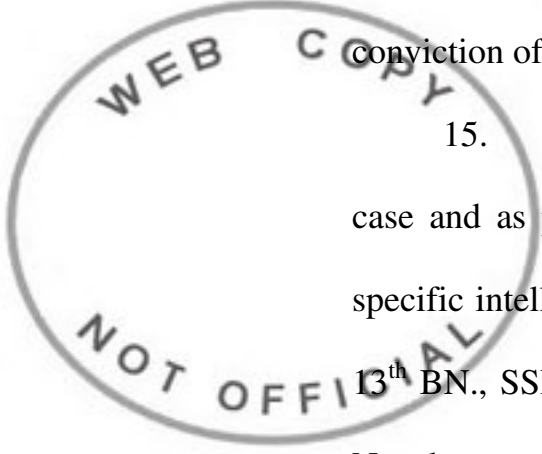
by independent evidence or independent witnesses can form basis of conviction if the Court is satisfied on careful and cautious appreciation of the evidence that it is otherwise reliable and has placed reliance on a decision of the Apex Court in the case of **Ajmer Singh Vs. State of Haryana** reported in **(2010) 3 SCC 746**. It has further been contended that the conviction can be recorded on the confession made before the Officer of Central Bureau of Narcotics as Officers notified under Section 53 of the Act are held not Police Officer hence, bar under Sections 25 and 26 of the Evidence Act held not applicable and the conviction can solely be recorded on confession under Section 67 of the Act and a reliance has been placed on a decision of the Apex Court in the case of **Ram Singh Versus Central Bureau of Narcotics** reported in **(2011) 11 SCC 347**.

13. Learned counsel for the appellant, however, fairly, submitted that as to whether conviction can be recorded solely on the basis of confession made under Section 67 of the Act before an Officer authorized under Section 53 of the Act and the matter has been referred to the Constitution Bench pending before the Supreme Court as would appear from the decision in the case of **Tofan Singh Versus State of Tamil Nadu** reported in **(2013) 16 SCC 31**.

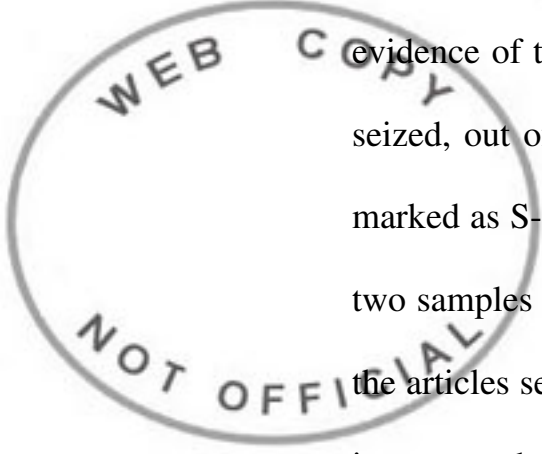
14. However, having regard to the fact that the matter referred to the Constitution Bench in 2013 is still pending before the Supreme Court on limited issue as to whether confession is admissible in evidence or not, the appellant is in jail since about four years, hence, having regard to the

respective submissions, the question arises for consideration as to whether conviction of the appellant is fit to be sustained.

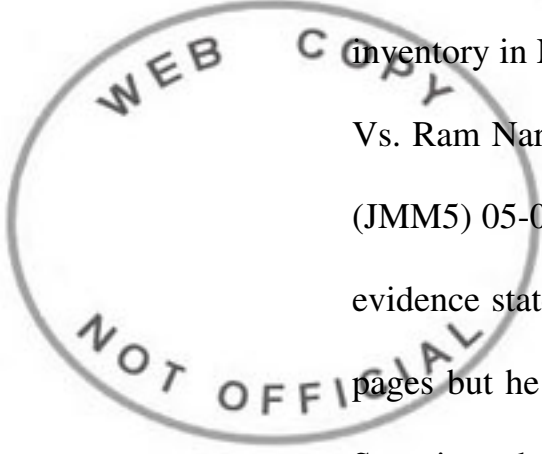
15. However, having regard to the facts and circumstances of the case and as per the prosecution case in the complaint, that on receiving specific intelligence on 20.06.2012, the Inspector, Shailesh Kumar, D coy, 13th BN., SSB, Pantoka, Raxaul about carriage of Heroin from Birganj to Nepal on motorbike he communicated the same to the superior Officer and a team of NCB was constituted for discrete investigation and both the SSB team jointly moved and intercepted the motorbike being driven by a man and asked two persons passing by to be witnesses during the search and seizure process, namely, Deepak Pandit and Kanhaiya Das and in their presence the intercepted person on motorbike disclosed his name as the appellant and he was given option under Section 50 of the Act regarding his right of being searched before a Gazetted Officer or a Magistrate which he refused and in presence of independent witnesses the articles recovered were weighed and found to the extent of 200 grams for which search-cum-seizure list was prepared and out of the said seized articles two samples of five grams each were kept in two separate polythene packets and thereafter heat sealed in two separate envelopes marked as S-1 and S-2 and thereafter the statement of the appellant was recorded under Section 67 of the Act in which he confessed that one Vinod Yadav had handed over the recovered Heroin to him to take the same to Ghantaghar Chowk, Birganj, Nepal and to hand over. The witnesses though admitted that the personal search of the

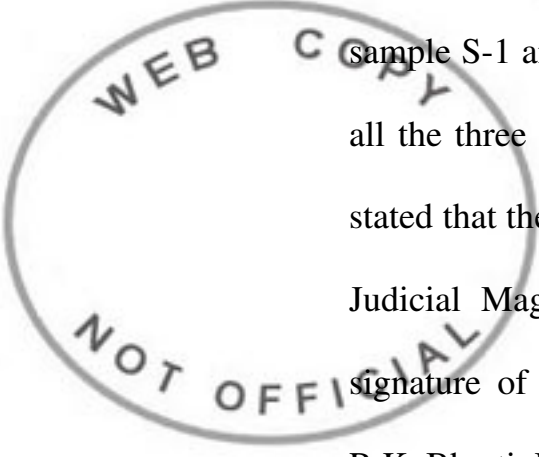


accused was also made, but there was no recovery from his person. The evidence of the witnesses is also to the effect that 200 grams Heroin were seized, out of which two samples of 05 grams each were taken and were marked as S-1 and S-2 and the seized articles were also heat sealed and the two samples were taken. It has also come in evidence of the witnesses that the articles seized were kept in NCB godown as per the evidence of P.W. 3 in paragraph 13 and subsequently the sample S-I was sent to Gajipur, U.P., but the said sample was returned to be sent to CRCL, Kolkata and from there positive report was received that the said sample received contained heroin and thereafter they also abided by Section 57 i.e. the information given to the Higher Officer as per the evidence of P.W.3 Officer of the Narcotics Control Bureau in paragraph 16 the report of the CRCL has been proved and marked as Ext.5. The test memo of the articles seized and sample taken was marked as Ext.3. The test memo sent along with the sample of the articles was seized and the report was received on the back of the said test memo which has been marked as Exts.10 and 15 from which it is apparent that the samples under reference answer positive test for Heroin, Morphine and other opium Alkaloids. However, P.W.4 has proved the paper of certification and signature of Judicial Magistrate, 1st Class, Motihari on the said certification marked as Ext.12. However, there is no date mention in the said certificate and the certificate is only to the extent that he allowed the application under sub-section 3 of Section 52A of the Act vide order contained in memo no. 464, learned Court, Motihari, dated



10th July, 2013 and it was certified that the correctness of the enclosed inventory in NDPS Case No. 65 of 2012 (NCB Crime No. 212) title as UOI Vs. Ram Narayan Sah, the enclosed photographs taken and list of samples (JMM5) 05-05 grams drawn in his presence. However, P.W.3 though in his evidence stated that he prepared the paper of certification prepared in four pages but he has stated that it bears his signature as well as signatures of Superintendent and Rajeev Kumar, Judicial Magistrate, 1st Class, Motihari which he identified and marked as Ext.12. However, it appears that Ext.12 has been marked as only one page out of the four pages though the four pages mention the date on 12.07.2013. The petition mentions with the heading as application for disposal of seized narcotic drugs and psychotropic substances under Section 52A(2) of the Act and the subject mentions as application for certification of correctness of inventory photographs and samples of seized narcotic drugs and psychotropic substances. However, the said certification is with regard to the heroin having the weight of .200 kg. light brown coloured semi solid substance believed to be Heroin, the number of samples drawn mention as one in duplicate of 0.5-0.5 grams each and so weight of the sample drawn is 10 grams the present remaining quantity shown to be 190 grams and any sample drawn is .05 grams marked as JMM 5 sealed with the Court seal JA and total quantity remaining shown to be .185 Kgs. which was certified. The said certified representative sample of 05 grams heroin drawn on 12.07.2013 has been marked as Ext.14. This witness has further stated that



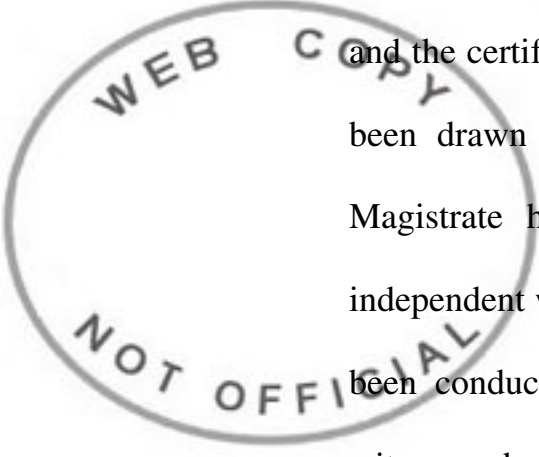


he has filed the closed seal envelope having sample S-2 and a remnant sample S-1 and representative sample marked as JMM5 and has stated that all the three envelopes have been obtained from NCB, Malkhana and has stated that the representative sample was received on 12.07.2013 before the Judicial Magistrate, R.K. Bharti which bears his signature as well as signature of the Superintendent, Vikash Kumar and Judicial Magistrate, R.K. Bharti. He has further deposed that the envelopes on which it has been written as representative sample, is sample of heroin, which was seized from possession of the appellant. He has further deposed that two small sealed envelopes with signature of Vijay Bharti, Seizing Officer are marked as Exts.13 and 13A and the two envelopes have been marked for identification as Y and Z. The envelope which contained Ext.X was shown to be witnessed and deposed that on the said envelope a paper has been pasted which bears the signature of NCB, Pantoka and signature of Superintendent, Vikash Kumar and signature of Judicial Magistrate, R.K. Bharti which has been marked as Ext.14 hence, from the evidence, it is apparent that the articles seized after apprehending the motorbike and the sample was taken on the date of occurrence on 20.06.2012 and it appears that out of the two samples drawn S-I and S-2, the sample taken as S-1 was sent to Gajipur, U.P., but the said sample was returned to CRCL, Kolkata. As per Ext.15, a report was sent on the back of the test memo that the sample sent is heroin though the report is without quantification with

endorsement that the quantification has not been done and the remnant sample is sent back having its weight as 1.08 grams.

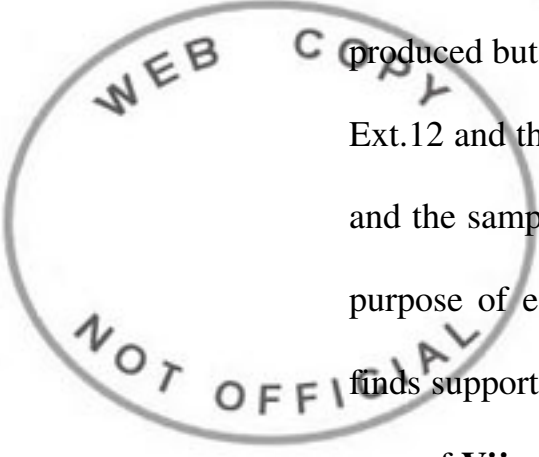
16. It is true that the articles seized were not produced in Court. From perusal of the record, it appears that no attempt was made to examine the two independent witnesses Deepak Pandit and Kanhaiya Das before whom the search and seizure were made. A reliance has been placed in the case of **Jitendra** (supra) which is with respect to the failure to produce seized drugs before the trial Court and hence, it is contended that the best evidence could have been the seized material which ought to have been produced during the trial.

17. However, the articles seized have not been produced but the samples S-1 and S-2 which was taken at the out set at the time of occurrence from the articles seized marked as Exts.13 and 13A which have been brought on record and have been proved, which contained the signature of the Seizing Officer as well as the signature of the independent witnesses and even the signature of the accused. Moreover, the witnesses deposed that the articles were kept in Malkhana and subsequently on 12.07.2013 the certification of the articles seized has been made. However, though a petition has been filed for disposal of the seized narcotics drugs and psychotropic substances and request had been made for certifying the correctness of the inventory, permit taking, photographs of the drugs and substances in the inventory and certifying such photographs. However, certification of the Magistrate with regard to the drug so mentions but



photograph has not been attached though there is certification of the articles and the certification also mentions that 05 grams samples of such drug has been drawn which is on record and the sample taken out before the Magistrate has been marked as JMM5 (Ext.14). It is true that the independent witnesses have not been examined but the raid as apparent has been conducted by the joint efforts of SSB and NCB and the official witnesses have supported the prosecution case regarding the search and seizure. However, recovery has been made on 20.06.2012 and sample taken on 20.06.2012 was received on 25.06.2012 and after the test and the remnant sample was returned with the plastic bag along with the report which is on record as S-1 (Ext.13) and S-2 (Ext.13A) is on record and however, the representative sample taken by the order of the Judicial Magistrate dated 12.07.2013 also on record provides as Ext.14 and further the fact that the articles seized were produced before the Judicial Magistrate with a prayer for disposal of the articles and the Magistrate certified the articles. As per Section 52A(4), the inventory shall be treated as the inventory and the list of sample drawn shall be treated as peremptory evidence of possession in respect of such offence. Hence, when the bulk quantity of heroin is destroyed the sample taken from bulk has been on record.

18. Hence, having regard to the fact that sample taken from the seized bulk is on record and the report of the FSL Ext.15 on the sample taken and sent as S-1 (Ext.13) is Heroin and Morphine has been proved.



Hence, taking into consideration the fact that the articles seized even if not produced but since the certification of the articles seized has been proved as Ext.12 and the sample taken from articles seized proved as Ext.13 and 13A and the sample has been brought in evidence is primary evidence from the purpose of establishing the fact of recovery of the Heroin and this view finds support from the decisions in the case of **Noor Aga** (supra) and in the case of **Vijay Jain Versus State of Madhya Pradesh** reported in (2013)14 SCC 527 and further the report of the CRCL, Kolkata shows that articles seized is Heroin and Mrophine and this coupled with confessional statement of the appellant under Section 67 of the Act shows that he took the Heorin from Binod Yadav for carrying it from Raxaul to Birganj for considerable amount of Rs.1000/-.

19. Hence, the confession under Section 67 of the Act Ext.2 coupled with the evidence of recovery of Heroin by the official witness and the certification of articles with sample taken having been proved and Exts.13, 13A and 14 and report of Chemical Examiner of CRCL, Kolkata Ext.15 that sample taken is Heroin and Morphine is ample evidence to infer that appellant was in possession of Heroin and the articles seized was Heroin. Hence, I find and hold that the prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts.

20. The criticism is that independent witness was not examined, which is of no significance in view of the confessional statement of the appellant when the evidence of the official witnesses was found to be

reliable, trustworthy and worthy of confidence and there is nothing in the evidence to disbelieve them.

21. Hence, I do not find any merit in this appeal to interfere with the judgment of conviction dated 27.06.2015 and order of sentence dated 03.07.2015 passed in N.D.P.S. Case No. 65 of 2012/Tr. No. 14 of 2012 by Sri Anand Singh, learned 1st Additional Sessions Judge, East Champaran, Motihari-cum-Special Judge, N.D.P.S., Motihari which are hereby sustained and the appeal is dismissed.

(Gopal Prasad, J)

Kundan Sharma

AFR/NAFR	N.A.
CAV DATE	12.05.2016
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