

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.733 of 2015

Against the judgment of conviction, dated 15.09.2015, and order of sentence, dated 21.09.2015, passed by Mr. Raj Kishore Pandey, Additional District and Sessions Judge, III, West Champaran at Bettiah, in Trial No. 26 of 2010, N.D.P.S. Case No. 10 of 2010 arising out of Bettiah Muffasil P.S. Case No. 26 of 2010

1. Mukesh Edward S/o Edward Florian Resident of Christian Quarter, Bettiah,
P.S. - Bettiah, District - West Champaran
Appellant

Versus

1. The State of Bihar Respondent

With

Criminal Appeal (SJ) No. 609 of 2015

1. Pinku Srivastav S/o Late Awatar Prasad Resident of Sarswati Nagar, P.S.
Bettiah Muffasil, District - West Champaran Appellant

Versus

1. The State of Bihar Respondent

With

Criminal Appeal (SJ) No. 618 of 2015

1. Munna Kumar Sharma S/O Shivshankar Sharma, Resident of Baswria, P.S.-
Bettiah Town, District- West Champaran Appellant

Versus

1. The State of Bihar Respondent

Appearance :

(In CR. APP (SJ) No. 733 of 2015)

For the Appellant : Mr. Bimlesh Kumar Pandey, Adv.

For the Respondent : Mr. S.A. Ahmad, APP

(In CR. APP (SJ) No. 609 of 2015)

For the Appellant : Mr. Sanjeev Kumar, Adv.

For the Respondent : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No. 618 of 2015)

For the Appellant : Mr. Sanjeev Kumar, Adv.

For the Respondent : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

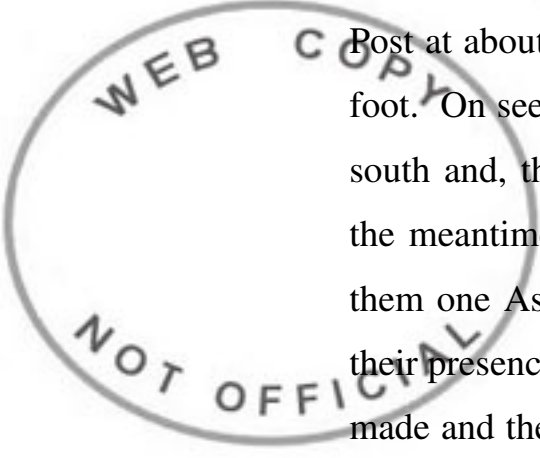
Date: 29-04-2016

Heard the learned counsel for the appellants and the State.

2. These three appeals have been heard together and disposed off by this common judgment as they arise of same

judgment, dated 21.09.2015, passed by Shri Raj Kishore Pandey, Additional District and Sessions Judge, III, West Champaran at Bettiah, in N.D.P.S. Case No. 10 of 2010 arising out of Bettiah Muffasil P.S. Case No. 26 of 2010 by which the appellants, Mukesh Edward and Pinku Srivastava, have been convicted under Sections 20(b)(ii)(B), 22B and 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for ten years each and a fine of rupees one lakh each and for non-payment of fine has, further, been sentenced to undergo simple imprisonment for one year and the appellant, Munna Kumar Sharma has been convicted under Section 20(b)(ii)(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo rigorous imprisonment for ten years and a fine of rupees one lakh and non-payment of fine has, further, been sentenced to undergo simple imprisonment.

3. The prosecution case, as alleged in the first information report, lodged on the basis of self statement of Sub Inspector of Police, Udai Kumar, Station House Officer, Muffasil Police Station, Bettiah, alleging therein that on 22.10.2010, while he was posted as Station House Officer of the above Police Station, he got information, on telephone, from the Inspector of Police-cum-Officer-in-Charge, Bettiah Nagar Police Station, Sone Lal Paswan, at about 06.15 P.M. that the police of Nagar Police Station has caught hold of two criminals, Samir Ansari and Munna Kumar Sharma along with fire arm and narcotics, who have disclosed that their two more associates are in the are of I.T.I. Road and if the immediate raid is conducted, then, there is possibility of their being apprehended. The said information was recorded in the case diary of the Muffasil Police Station, being Sanha no. 37, dated 02.02.2010, and the informant along with Assistant Sub Inspector of Police, Ashique Ansari,



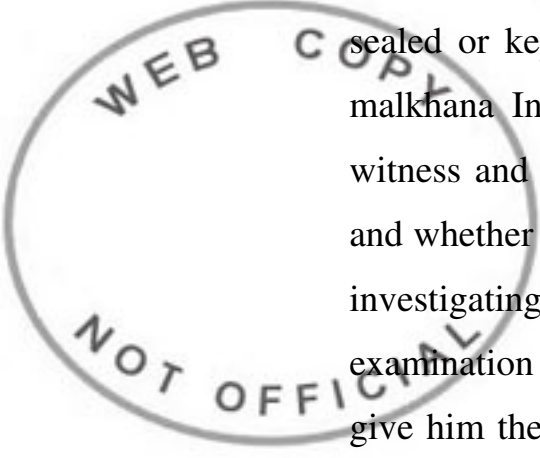
Constable, Firoz Mohammad, Constable, Hari Shankar Ram, proceed on police jeep for I.T.I. Road and when they reached at the Check-Post at about 06.15 P.M. they saw two persons going towards east on foot. On seeing the police, both of them started fleeing away towards south and, then, they were caught after chase by the police party, in the meantime, the persons moving on road also collected and out of them one Ashok Prasad and Nandu Prasad taken as witnesses and in their presence the search of the body of both the accused persons were made and they disclosed their names as Pinku Srivastava and Mukesh Edward and from the personal search of Pinku Srivastava a loaded pistol was recovered of 3.15 bore and cartridges also recovered and from the possession of another Mukesh Edward 500 grams charas recovered from polythene bag and for which they did not produce any paper and they disclosed the names of other associates as Samir Ansari and Munna Kumar Sharma. The seizure list prepared with regard to the seized articles and the articles recovered from their possession were seized. The seized articles were sealed and the police arrested the accused persons.

4. On the written report of the informant, Udai Kumar, Officer-in-Charge of Bettiah Muffasil Police Station, the first information report was lodged and the investigation of the case was handed over to Assistant Sub Inspector of Police, R.N. Pandey, and after receiving the investigation the statement of the informant was recorded and, further, the further statements of the informant was also recorded, sent the seized article to the Forensic Science Laboratory, inspected the place of occurrence as well as recorded the statement of the seizure list witnesses and other witnesses and, thereafter, submitted the charge sheet. After submission of the charge sheet the cognizance taken and, thereafter, framing of the charge, the trial proceeded.

5. During the trial five witnesses were examined by the prosecution. P.W. 1 is Firoz Mohammad, a Constable and member of the raiding party, who has supported the prosecution case regarding the seizure of the articles by catching hold of Mukesh Edward and Pinku Srivastava and the seizure list was prepared and came to the Police Station along with the seized articles and the accused persons. P.W. 2 is Hari Shankar Ram. He is also a Constable and member of the raiding party and supported the prosecution case regarding the apprehension of two accused persons, Pinku Srivastava and Mukesh Edward, and recovery of arm and polythene bag. P.Ws. 3 and 4 are independent seizure list witnesses, however, they have proved their signatures on the seizure list. The names of the independent witnesses are Ashok Prasad and Nandu Prasad and they have deposed that nothing recovered from the possession of the accused persons and daroga has not prepared the seizure list before them, but, got their signatures. P.W. 5 is Raj Nath Pandey, the investigating officer of the case and deposed though he took the charge of the investigation, recorded the statement of the witnesses as well as recorded the statement of the seizure list witnesses, inspected the place of occurrence and with the permission of the District Judge, sent the seized charas to the Forensic Science Laboratory and, thereafter, submitted the charge sheet.

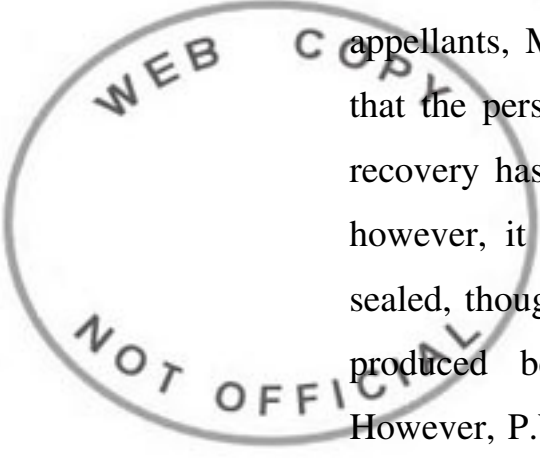
6. The trial Court, taking into consideration the evidence of the witnesses though acquitted the appellants under the Arms Act, but, convicted the appellants, as mentioned at the outset.

7. The learned counsel for the appellants has challenged the order of conviction and sentence recorded by the trial Court. It is submitted that though the allegation is that two accused persons were apprehended and the articles were seized and the seized articles along with the accused persons were brought in the Police Station, however,



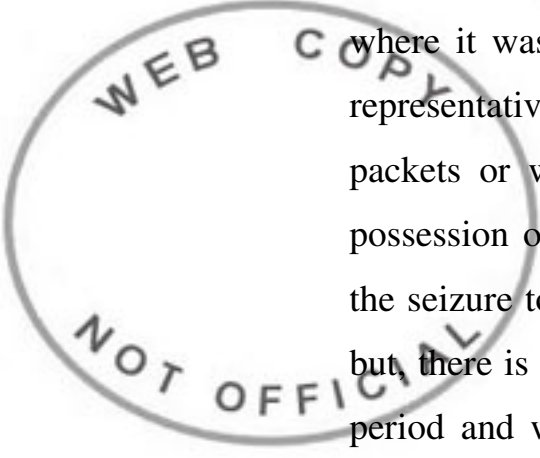
the informant of the case has not been examined. It has, further, been contended that there is no mention whether the articles, seized, were sealed or kept neither malkhana register has been produced nor the malkhana In-Charge of the Police Station has been examined as a witness and there is no evidence where the seized articles were kept and whether the articles, seized, were kept in sealed cover or not. The investigating officer of the case, in his evidence, has stated in cross-examination that the Officer-in-Charge of the Police Station did not give him the charge of the seized articles and the seized articles was shown to him was not in a sealed state rather it was unsealed. He has, further, stated in paragraph 23 of his deposition that when he was handed over the charge of the investigation at that time no sealed article was placed before him. It has, further, been contended that though the evidence of the investigating officer that he sent the seized article to the Forensic Science Laboratory, but, there is no mention that whether he taken out the sample from the article and whether the said sample or the seized articles were sealed. It has, further, been contended that neither sealed articles were placed before the Court nor the certification of the articles has been placed nor the malkhana register has been placed to show that where the articles, seized. It has, further, been contended that non-production of the articles, seized or in it's place non-production of any certification of the Magistrate and further non-production of any document to show that the article seized were destroyed casts serious doubt regarding the possession of the articles from the appellants.

8. The learned counsel for the State, however, does not challenge the contention. However, going to the record of evidence and the evidence of the witnesses, it is apparent that the informant of the case has not been examined. The two witnesses, P.Ws. 1 and 2, who are the members of the raiding party have been examined as



witnesses and though they have supported the prosecution case that they were members of the party and they caught hold of the two appellants, Mukesh Edward and Pinku Srivastava and even claimed that the persons of the body of the appellants were searched and a recovery has been made of the arms as well as recovery of charas, however, it has not been mentioned that the articles, seized, were sealed, though they have stated that the arrested two appellants were produced before the Officer-in-Charge of the Police Station. However, P.Ws. 2, 3 and 4 are seizure list witnesses and they signed the seizure list, but, they have stated that nothing was recovered before them, hence, the evidence regarding the recovery of articles is missing, but, the witnesses declared hostile by the prosecution to discredit their testimony. However, the investigating officer did not get the charge of the seized articles and was shown the article seized were not in seal cover, hence, having regard to the fact that the occurrence took place on 02.02.2010 and from the Forensic Science Laboratory report it appears that the samples were received on 11.02.2010, where the informant, in this case, has stated that the samples were sent for examination on 10.03.2010, hence, evidence regarding sending the article to Forensic Science Laboratory is contradiction when the Forensic Science Laboratory report shows that the sample was received on 11.02.2010 and the difference of one month has not been explained.

9. However, going to the submissions made that there is apparent violation of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, as the article, seized, has not been produced before the Magistrate for the certification nor the inventory prepared nor the photographs of the articles have been taken nor the representative samples have been drawn before the Magistrate and, further, the fact that the articles, seized, has neither been produced nor



the destruction of the articles. Hence, having regard to the fact that there is no evidence that what happened to the seized article and where it was kept or who took the representative samples, how the representative samples were taken, whether it was taken from each packets or whether it was taken from the articles seized from the possession of the appellants or not and, further, the fact that though the seizure took place on 02.02.2010 and sample sent on 10.02.2010, but there is no evidence that whether the sample was kept during the period and whether it was kept in sealed condition and there is no evidence that where the samples were kept and, further, the seized articles having not been produced before the Court nor the certification of the Magistrate nor the destruction of the articles has been placed, hence, it casts serious doubt on the prosecution case regarding the recovery of possession of the article from the appellants and when the articles, seized, were not kept in sealed condition and there is no evidence that the representative samples were taken from the article, seized, and, further, there is violation of Sections 52A, 55 and 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985, as neither the samples taken before the Magistrate nor the samples were sealed with the seal of the Officer-in-Charge of the Police Station under Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, nor there is any evidence that after the seizure, report was sent to the superior officer, which casts serious doubt about the prosecution case and the order of conviction and sentence under the facts and circumstances of the case is not sustainable. I hold that the prosecution has not been able to prove the charge beyond reasonable doubts and I acquit the appellants of the charges.

10. Hence, the order of conviction and sentence, recorded by the trial Court, is hereby **set aside** and the appeals are **allowed**.

11. The appellants, Pinku Srivastava and Munna Kumar

Sharma, are already on bail. Since, the appellant, Mukesh Edward, is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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