

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.673 of 2015

Against the judgment of conviction dated 01.10.2015 and order of sentence dated 06.10.2015 passed by Shri Jitendra Kumar Dubey, learned Additional District & Sessions Judge-Vth, West Champaran, Bettiah, in Trial No. 07 of 2011 (arising out of N.D.P.S. Case No. 87 of 2010 Narkatiaganj Rail P.S. Case No. 45 of 2010)

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Lal Mohammad Gaddi, Son of Suleman Gaddi, Resident of Village-Line Parsa, P.S. Balthar, District- West Champaran

.... Appellant

Versus

1. The State of Bihar.
2. The Union of India through Regional Director, Narcotic Control Bureau, Patna.

.... Respondents.

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Appearance :

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

For the State : Mr. Z. Hoda, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 06-05-2016

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arise out of the judgment of conviction dated 01.10.2015 and order of sentence dated 06.10.2015 passed by Shri Jitendra Kumar Dubey, learned Additional District & Sessions Judge-Vth, West Champaran, Bettiah, in Trial No. 07 of 2011 (arising out of N.D.P.S. Case No. 87 of 2010 Narkatiaganj Rail P.S. Case No. 45 of 2010) by which the appellant had been convicted for offence under Sections 20(b) (ii)C/22C/23C of N.D.P.S. Act and sentenced for



offence under Section 20(b)(ii)(C) of N.D.P.S. Act and to undergo rigorous imprisonment for ten years and payment of fine of Rs. 1,00,000/- and in default of fine further undergo additional sentence for six months. Further convicted for offence under Section 23C of N.D.P.S. Act and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.1,00,000/- and in default of payment of fine further undergo additional sentence for six months. All the sentences were ordered to run concurrently.

3. The prosecution case as alleged in the written by the In-charge Inspector Railway police force addressed to the Officer-in-Charge alleging therein that R.P.F. personnel during night checking on 30.09.2010 in train No. 219 UP at about 00.40 A.M. in the third coach from engine, two persons loaded with heavy articles in a gunny bag and kept in the latrine gate. Thereafter, they were apprehended and gunny bag was checked and two persons disclosed their names as Lal Mohammad Gaddi and Najir Ahmed. On search of gunny bag, 17 packets of ganja weight 55 K.G. and 2 K.G. Charas was seized. Their personal search was also made and then seizure list prepared along with two accused persons. The accused persons along with said seized Ganja and Charas were taken to Raxaul R.P.F. post and then along with written report of the informant Arun Kumar Gupta, Prabhari Inspector R.P.F. sent to the Officer-in-Charge Rail P.S.



Narkatiaganj. Thereafter, on the basis of written report of the informant, Narkatiaganj Rail P.S. Case No. (G.R.P.S.) No. 45 of 2010 was registered and investigation proceeded. Sample of seized Ganja and Charas was sent to F.S.L. After investigation, I.O. had submitted charge sheet on which cognizance taken. Thereafter, trial proceeded after framing of the charge.

4. During trial five witnesses were examined, though, five witnesses were supported the prosecution case regarding recovery of Ganja and Charas in night checking and articles were seized from the gunny bag. The accused persons were handed over to the Inspector R.P.F. who sent the accused along with written report to the Officer-in-Charge of Railway P.S. Thereafter, the sample was taken and sent for chemical examination. The report of F.S.L. has been received which has marked as Exhibit-2/A showing sample of article seized were Ganja and Charas.

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

6. Learned counsel for the appellant however challenged the order of conviction and sentence on the ground that neither the seized article nor the representative sample has been produced in the court. Further, the I.O. of the case has not been examined in this case, neither there is no evidence who take out the representative sample

nor there is mentioned that where the seized article was kept. It is further contended that neither the Officer-in-Charge of Malkhana has been examined nor Malkhana register was ever produced to prove where the seized article was kept. Hence, submits that order of conviction and sentenced recorded by the trial court cannot sustained.

7. Learned counsel for the State however, does not dispute the contention of the learned counsel for the appellant. However, submits that prosecution has been able to prove the article seized from the possession of the appellant and sample taken from the seized article was sent to F.S.L.

8. However, it is well settle that in case of seizure of the contraband, the basic evidence that article seized was required to be produced before the trial court as material evidence and even if the same has not been produced, at least representative sample was required to be produced to show that it is the Narcotic and Psychotropic substance alleged to be seized from the possession of the accused. However, neither article has been produced nor any explanation has been given for production of the article seized. Further, neither Malkhana registered has been produced nor Malkhana Officer has been examined to suggest where the article was kept nor the certification of the Magistrate has been proved regarding article seized nor the destruction of the article seized required under Section

52(A) of N.D.P.S. Act has been proved on record. Hence, there is no evidence to connect the F.S.L. report with the article seized from the possession of the accused and in such case, conviction cannot be sustained as it is not safe to rely on the report of F.S.L. in absence of any evidence that sample was taken from the article seized. Further fact that the article seized has not been produced in the court itself become doubtful and mere prove of seizure list of Panchnama if not tested then heavy burden lies on the prosecution, particularly when the offence is punishable with stringent sentence under N.D.P.S., Act and this view reported in decision 2004(X) SCC 562 and decision reported in 2013 (14) S.C.C. 527. Hence, the order of conviction and sentence recorded by the trial court is not sustainable and hereby set aside.

9. As a result the appeal is allowed.

10. The appellant is in jail custody be released forthwith if not required in any other case.

m.p.

(Gopal Prasad, J)

AFR/NAFR	NAFR
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