

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 703 of 2015

Against the judgment of conviction dated 07.10.2015 and order of sentence dated 09.10.2015 passed in Session Trial No. 66 of 2010, NDPS Case No. 50 of 2010 arising out of Rail P.S. Raxaul Case No. 04 of 2010 by the learned 4th Additional Sessions Judge, West Champaran, Bettiah

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Lal Babu Sah, S/O Late Paspal Sah, R/O Village - Ahiyapur, P.S. - Sahebganj, Dist - Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Krishna Kant Singh, Advocate
Mr. Anil Kumar Singh, Advocate
For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

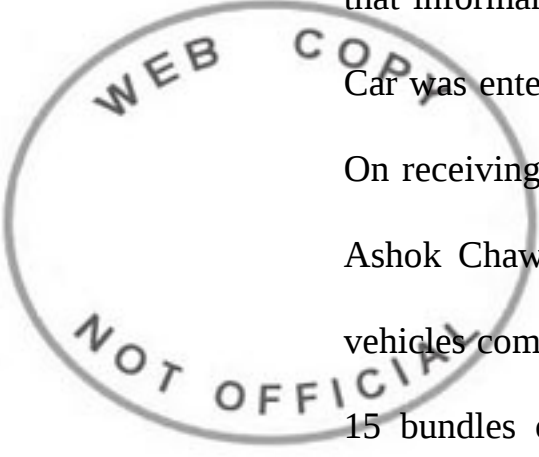
ORAL JUDGMENT

Date: 29-04-2016

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

2. The appellant has been convicted under Sections 20(b)(ii)(C), 22(c) and 23(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the N.D.P.S. Act) and sentenced to undergo rigorous imprisonment for ten years for each offences with a fine of Rs.1,00,000/- and in default of payment of fine to undergo imprisonment for one year for each offences. However, it has been ordered that all the sentences shall run concurrently.

3. The prosecution case, as alleged in the First Information Report lodged by the Company Commander, S.S.B. is that during the special patrolling and on search of the vehicle on 28.06.2010 at 12:45 p.m., 15 bundles of Ganja were recovered, weighing 125 Kg. from the



Steam Car No. M.H.-06 F 4040, Chassis No. 20357. The further case is that informant received secret information that one white Maruti Steam Car was entering into the territory of India with huge quantity of Ganja. On receiving such information, a patrolling party was constituted under Ashok Chawda and sent near Railway Dhala with instruction that all vehicles coming from Nepal should be checked. During course of search 15 bundles of Ganja (approximately 125 Kg.) were seized from the dickey of a Steam Car and the car driver and another person sitting in the car were arrested. The apprehended persons disclosed their names as Abhimanyu Kumar Gupta and Lal Babu Sah (the appellant) and further disclosed that one Binod had asked them to bring it to Bata Chowk, Raxaul and had said that he would wait for them near the said Bata Chowk. The apprehended persons also disclosed that they were not informed about the Ganja kept in the dickey. The informant thereafter handed over the Ganja, Steam Car and apprehended persons to the Rail Police.

4. However, after investigation charge-sheet was submitted, cognizance was taken and after framing of the charge for the offence under Sections 20(b), 22 and 23 of the N.D.P.S. Act, trial proceeded. During trial, four witnesses were examined.

5. P.W. 1 Nibendra Dass supported the prosecution case that on secret information he conducted raid and searched the vehicles

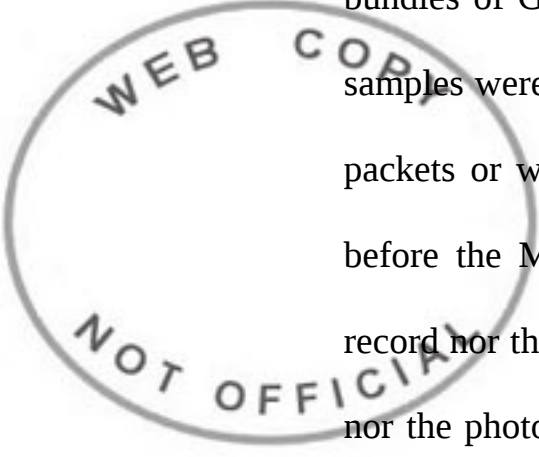
coming from Nepal Border. During the course of checking vehicle was apprehended containing 15 bags of Ganja and on weighing it was found 125 Kg. and thereafter two persons were apprehended and the Ganja seized were handed over to the Rail Police.

6. P.W.2 Amar Pratap Singh has also supported the prosecution case regarding the search and apprehension of the accused and seizure of the Ganja from the said vehicle and thereafter the articles were seized and the accused persons were handed over to the Rail Police.

7. P.W.3 Deepak Kumar is one of the members of the raiding party and P.W.4 is Ashok Chawda, Sub-Inspector of S.B.B., 62 Battalion and their evidences are to the same effect regarding the recovery of the articles seized from the car and handing over of the articles to the police. However, the Investigating Officer of the case has not been examined.

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

9. Learned counsel for the appellant, however, contended that there is violation of Section 42 of the N.D.P.S. Act as there was prior information but the same was not recorded nor sent to the Superior Police Officer. He further contended that there was only material that 15 bundles of Ganja were seized but there is no mention as to where the Ganja seized was kept and whether the seized Ganja was sealed with the seal of the Officer-In-Charge of the Police Station. There is no evidence

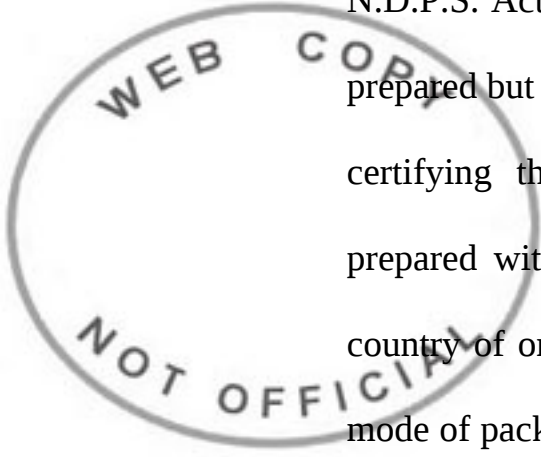


as to whether the representative samples were taken from the seized bundles of Ganja. There is no mention as to whether the representative samples were taken from each of the packets or whether from one of the packets or which of the packets. Neither the Ganja has been produced before the Magistrate nor the Malkhana register has been brought on record nor there is any certification of the articles seized by a Magistrate nor the photographs of the articles were taken for certifying the articles seized nor the certificate of the correctness of the inventory so prepared has been made. The inventory prepared has also not been certified by the Magistrate nor the destruction report has been proved nor the articles seized have been produced in Court nor even the samples of the articles seized have been brought on record and hence, the evidence regarding the search and seizure and possession of the articles seized or recovery of the articles casts a serious doubt and therefore, the conviction recorded by the trial Court against the appellant is not sustainable in the eye of law.

10. Learned counsel for the State submits that the prosecution has not asked any question regarding the sampling of the articles.

11. However, it is apparent from going through the entire evidence and taking into consideration that there is evidence regarding the recovery of 15 bundles of Ganja from the car, there is no evidence as to where the articles seized were kept and sealed with the seal of the

Officer-in-Charge and hence, there is violation of Section 55 of the N.D.P.S. Act. However, the articles were seized and the seizure list was prepared but the said articles were not produced before the Magistrate for certifying the correctness of the inventory. There is no inventory prepared with regard to each 15 bundles sealed with the mark of the country of origin and other particulars of the articles regarding the test, mode of packing, marks, quality, quantity nor there is any certification of the Magistrate nor the photographs of the articles seized in compliance of Section 52A of the N.D.P.S. Act nor the reply has been drawn before the Magistrate in compliance of Section 52A of the N.D.P.S. Act. However, there is no evidence at all as to who took the representative sample from the articles seized and there is no evidence as to whether the articles seized were sealed. There is no evidence as to whether the articles seized was kept in sealed cover and further there is no evidence as to where the articles seized were kept nor the Malkhana register was proved and hence, under such circumstances there is no evidence as to from where the sample was taken and hence, it casts a serious doubt that Forensic Science Laboratory report is actually with regard to the article seized from the possession of the appellant and the appellant has seriously been prejudiced for non-compliance of Section 52A of the N.D.P.S. Act or even having regard to the fact that there is no evidence at all that the representative samples were taken or the articles seized hence, the



judgment of conviction and order of sentence recorded by the trial court are not sustainable.

12. Hence, I find and hold that the prosecution has not been able to prove the charges levelled against the appellant beyond all reasonable doubts and the judgment of conviction dated 07.10.2015 and order of sentence dated 09.10.2015 passed in Session Trial No. 66 of 2010, NDPS Case No. 50 of 2010 arising out of Rail P.S. Raxaul Case No. 04 of 2010 by the learned 4th Additional Sessions Judge, West Champaran, Bettiah, are hereby set aside and the appeal is allowed. Appellant, namely, Lal Babu Sah, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Kundan Sharma

AFR/NAFR	NAFR
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