

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.653 of 2013**

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[Against the judgment of conviction dated 29<sup>th</sup> May, 2013, and order of sentence dated 13<sup>th</sup> June, 2013, passed by the 6<sup>th</sup> Additional Sessions Judge-cum-Special Judge, NDPS Act, East Champaran at Motihari, in NDPS Case No.81 of 2008]

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1. Sona Lal Sah @ Sona Lal Prasad, son of Babu Lal Sah, resident of village-Tumariyatola, Near Duncon Hospital, P.S.-Haraiya, O.P. Raxaul, District-East Champaran

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

With

**Criminal Appeal (DB) No. 1022 of 2013**

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[Against the judgment of conviction dated 29<sup>th</sup> May, 2013, and order of sentence dated 13<sup>th</sup> June, 2013, passed by the 6<sup>th</sup> Additional Sessions Judge-cum-Special Judge, NDPS Act, East Champaran at Motihari, in NDPS Case No.81 of 2008]

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1. Prabhu Das, S/O Bhairo Das, resident of village - Dhopwa Tola, P.S. - Haraiya O.P. (Raxaul), Distt. - East Champaran

.... .... Appellant/s

Versus

1. The State of Bihar &  
2. The Union of India through Sri A.M.F. Azam, Inspector of Custom (P) Division, Sugauli, District- East Champaran

.... .... Respondent/s

**Appearance:**

(In both the Appeals)

For the Appellant/s : Mr. Shri Prakash Tiwari, Advocate  
Mr. Anand Tiwari, Advocate  
Mr. Mahesh Kumar, Advocate

For the Union of India : Mr. Anshuman Singh, Advocate, CGC, UOI  
[Customs (Preventive)]

**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**&**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)**

**Date: 20-04-2016**



1. Both the Appellants have been convicted under Section 20-C of the NDPS Act and sentenced to undergo rigorous imprisonment for twelve years with fine of ₹1,00,000/- (One lac) and in default of payment of fine both the Appellants shall further undergo rigorous imprisonment for one year by the judgment of conviction dated 29<sup>th</sup> May, 2013, and order of sentence dated 13<sup>th</sup> June, 2013, passed by the 6<sup>th</sup> Additional Sessions Judge-cum-Special Judge, NDPS Act, East Champaran at Motihari, in NDPS Case No.81 of 2008.

2. The case of the Complainant/Informant, A.M.F.Azam, (PW 4) is that on 13.08.2008 while he was posted as Inspector of Customs (P) Circle Sugauli, he received secret information that a truck would be passing on that way with *Ganja* loaded on it. He then constituted a raiding team and inspected the truck and from the secret chamber of which 91 bags of *Ganja* weighing 990 Kg. was recovered. The two persons present on the truck were the two Appellants.

3. During trial, the prosecution examined eight witnesses.

4. Having gone through the records of the case and on hearing argument, we are of the view that conviction of the Appellants under Section 20-C of the NDPS Act cannot be sustained. While discussing the evidence of the witnesses it will be evident as to why we have reached such conclusion.

5. PW 1 (Harishankar Kumar) was one of the members

of the Raiding Team on 13.08.2008, who along with others inspected the truck, in question, upon which the Informant climbed and found a secret chamber from which 91 bags of *Ganja* weighing 990 Kg. was recovered. The Inspector thereafter made seizure, Panchnama and interrogated the present Appellants and also took out samples for testing.

In cross-examination, he stated that the entire team had weighed the *Ganja* which had taken about an hour's time. He further stated that samples were drawn from the top and bottom two bags as also that all bags were of different weights. He could not say as to how many samples were drawn since it was not his work.

**6.** PW 2 (Ram Ishwar Ram) also member of the Raiding Team has supported the factum of recovery of *Ganja* from the secret chamber of which present two Appellants were sitting.

In cross-examination, he stated that it was PW 1, who had weighed the *Ganja*. There is nothing else which is of note.

**7.** PW 3 (Ram Babu Singh) another member of the Raiding Team supported the factum of recovery.

In cross-examination, he stated that when packets were recovered, they were opened to see as to what was inside and thereafter once again bound with rope. Five to ten packets were opened and all of them were numbered as 1, 2, 3,.... This was done by the team leader,

whereas, they were watching.

8. PW 4 (A.M.F. Azam) is the Informant/Complainant, who reiterated the statement given in the *fard-e-bayan* that on secret information a truck was intercepted and behind the driver seat a secret chamber was found from which 990 Kg. *Ganja* was found and recovered in separate bags. Same was seized and Panchnama was prepared. He proved the seizure list as Ext.1 and Panchnama as Ext.2. He proved the Voluntary Statement of the Appellants as Ext.3 and 3/1. He also identified the thumb impression of the Appellants on the Interrogatory Statement as Ext.4 and 4/1. He further stated that the accused were produced before the Court concerned through the forwarding memo which is Ext.5 and the official complaint was instituted. He proved his signature on the official complaint as Ext.6. He also stated that samples were drawn and sealed in presence of witnesses and accused persons. The report in its regard was that samples contained *Ganja*.

In his examination-in-chief, he has stated as to how samples were drawn but in cross-examination he stated that samples were drawn from 3-4 packets after opening them and it was sent for testing on 14.08.2008 itself.

9. PW 5 (Sri Pawan Kumar Sandily) has proved Custodian Receipt which is Ext.7 and Chemical Examination Report of

*Ganja* which is Ext.8.

**10.** PW 6 (Bijay Chandra Ray) has produced the certification paper in regard to order for destruction of seized goods which is Ext.9. This appears to be dated 20.03.2012 i.e. four years later.

**11.** PW 7 (Simon Ekka) is also a member of the Raiding Team, who stated that truck was inspected and *Ganja* weighing 990Kg. was recovered of which seizure list was prepared by the Informant (PW 4), who also prepared Panchnama. The accused were also examined, who stated that, in fact, they were labourers and had been asked to drive the truck on certain remuneration.

**12.** PW 8 (Indrajeet Pd. Singh) is also a member of the Raiding Team, who supported the statement given by rest of the members of the Raiding Team.

In cross-examination, he stated that when he reached there, seizure list was being prepared and interrogation being conducted.

**13.** Thus, we find that apart from PW 1 and PW 4 none of the witnesses have stated about the manner in which sample was drawn. Whereas PW 1 says that samples were drawn from the two packets i.e. top and bottom one, PW 4 generally says that samples were drawn from 3-4 packets. The fact remains that only one sample was sent for testing which tested positive. PW 1 deposed that all the bags were of different sizes and only one sample was sent to the Forensic Science

Laboratory, it would be difficult to conclude that the Appellants were in possession of commercial quantity of *Ganja* and liable for conviction under Section 20-C of the NDPS Act, when in the circumstances of the case, there is no conclusive material that all the bags which had been recovered contained *Ganja* and nothing else.

**14.** Hence, we find that in the facts of the case the conviction of Appellants can only be maintained under Section 20 (ii) B of the NDPS Act for which sentence of eight years which has already been undergone by them would be sufficient enough. The fine of ₹1,00,000/- (One lac) imposed upon the Appellants by the impugned judgment is waived.

**15.** In the result, both the appeals are dismissed but with modification in the conviction and sentence as mentioned above.

**(Anjana Prakash, J)**

***J.Alam/-***

**(Rajendra Kumar Mishra, J)**

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