

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 133 of 2014

Against the judgment of conviction and order of sentence dated 21.01.2014 passed in N.D.P.S. Case No. 06 of 2012 by Jagdish Prasad Mishra, learned 2nd Additional Sessions Judge, Bhojpur, Arrah

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Ganesh Nonia, Son of Shiv Kumar Nonia, Resident of Village - Nawada Ben, P.S. -
Udwant Nagar, District - Bhojpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : M/s Surendra Kumar Singh, Advocate
Prabat Kumar Singh, Advocate
Ganesh Prasad Singh, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 28-03-2016

Heard learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”) and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.1,00,000/- (one lakh) and in default of payment of fine to further undergo rigorous imprisonment for two years.

3. The prosecution case, as alleged in the self written statement of the informant, Ravindra Kumar, Sub-Inspector of Police/Station House Officer, Gajrajganj O.P., District Bhojpur recorded at village Nawadah Ben on 30.03.2012 at 13:30 hours in the house of Ganesh Nonia, is that while he was at Police Station, he received a secret information at about 11:30 A.M. that in the village Nawadah Ben in the

house of Ganesh Nonia illicit Ganja has been kept. On the said information the informant Ravindra Kumar along with police personnel including the Block Development Officer reached the house of Ganesh Nonia and the said premises was searched and from his house two packets of white material were found. It is further alleged that smell of Ganja was coming through these two packets and the same were seized and seizure list prepared. On the basis of the said written report the First Information Report was lodged and the investigation was handed over to Station House Officer Dhrub Shankar Singh, Udwantnagar and after investigation charge-sheet was submitted, on which cognizance was taken. After framing of the charge, trial proceeded and the case was registered under the NDPS Act. During trial, five witnesses were examined.

4. P.W.1 Ganesh Yadav deposed that on 30.03.2012 he was posted at Gajrajganj O.P. and on secret information he proceeded with the police personnel for Nawada Ben village along with the Block Development Officer and after search Ganja was recovered from the house of the appellant.

5. P.W.2 Bhola Ram deposed to the same effect regarding the recovery of Ganja from the house of the appellant.

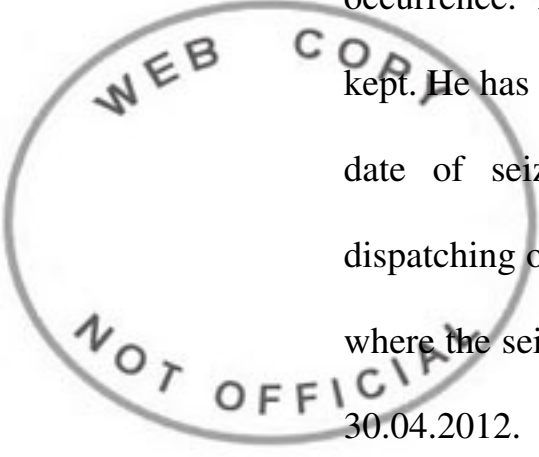
6. P.W.3 Madan Narain Singh, Block Development Officer, Udwant Nagar has also supported the prosecution case. He has further

deposed that he along with the Officer-in-Charge, Gajrajganj and other police personnel proceeded for village Nawadah Ben and supported the recovery of the Ganja in two packets each containing 12½ Kg. Ganja.

7. P.W.4 Ravindra Kumar is the informant and Officer-in-Charge of Gajrajganj Police Station and has also deposed that on secret information he proceeded to the house of the appellant and recovered Ganja in presence of the Block Development Officer. He has proved the written report. The document proved in the case as Ext.1 is the signature of Madan Narayan Singh on the seizure list, Ext.2 is the seizure list, Ext.3 is the self written statement of the informant, Ext.4 is the formal First Information Report, Ext.5 is the Forensic Science Laboratory report, Ext.6 is the chemical examiner's report, Ext.7 is paragraphs 1 to 78 of the case diary and Exts. 8 and 8/A are the signatures of witnesses Lallan Prasad and Chitaranjan Prasad on the seizure lists.

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

9. Learned counsel for the appellant, however, challenged the judgment and order of conviction and sentence recorded by the trial Court on the sole ground that the Investigating Officer has not been examined in this case. There is no evidence as to whether the articles were kept after the seizure of the alleged Ganja by the Police. There is no



evidence as to whether the articles seized were sealed at the place of occurrence. There is no evidence as to where the articles seized were kept. He has contended that as per Ext.6 (chemical examiner's report) the date of seizure is 30.03.2012 whereas the date of drawing and dispatching of sample is 30.04.2012. However, there is no evidence as to where the seized articles were kept during the period from 30.03.2012 to 30.04.2012. He has further contended that there is no report of the Magistrate in compliance with Section 52(a) of the NDPS Act. Neither there is evidence that the narcotic drugs seized were forwarded to the Officer-in-Charge of the Police Station, nor is there any detailed description of the quality, quantity and mode of packing, nor the representative samples were taken in presence of the Magistrate nor is there any certification of the correctness of articles seized or list of samples taken from seized articles and, hence, there is non-compliance of Section 52A of the NDPS Act. Though the informant received a secret information and proceeded for search and seizure, but there is no mention that he recorded the said secret information, nor is there any evidence that he took down the same in writing regarding the information received, nor is there any mention in evidence that he, within 72 hours, sent a copy thereof to the immediate superior officer and hence, there is violation of Section 42 of the NDPS Act.

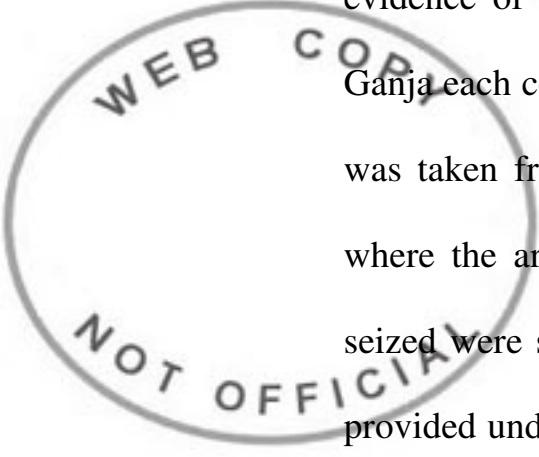
10. Learned counsel for the State, however, submits that there

is abundant evidence to show that the articles were seized on the basis of secret information, police proceeded and the seizure of the articles from the house of the appellant in presence of the Block Development Officer and the Magistrate was made, for which the seizure lists were prepared which were duly signed by the Officer-in-Charge. He further submits that the Forensic Science Laboratory report indicates that the sample received was Ganja.

11. Having regard to the respective submissions of the parties the question is as to whether the prosecution has been able to prove the charges beyond all reasonable doubts to sustain the conviction and sentence recorded by the trial Court.

12. However, the position of the law is well settled that the safeguard provided under the Narcotic Drugs and Psychotropic Substances Act is required to be proved before recording a conviction.

13. However, going into the merits of the case, it is apparent that the informant in his evidence has specifically stated that on receiving secret information he proceeded along with the Magistrate (Block Development Officer) and the police personnel and made search and seizure of the articles from the house of the appellant. However, there is no evidence that he recorded the secret information received in writing as provided under Section 42(1) of the NDPS Act nor in the entire evidence it has been mentioned that the said information was communicated to the



superior officer as per Section 42(2) of the NDPS Act. Further there is evidence of P.Ws.1, 2, 3 and 4 regarding recovery of two packets of Ganja each containing 12½ Kg., but there is no evidence that any sample was taken from the said two packets. There is also no evidence as to where the articles were kept after its seizure and whether the articles seized were sealed at the place of occurrence and, hence, the safeguard provided under Section 42(1)(2) of the NDPS Act has not been followed and further safeguard as provided under Section 52(a) of the NDPS Act that the articles seized were required to be certified by the correctness of the inventory so prepared and certification with details of the articles seized, its specification marks and the same be certified by the Magistrate was not followed and after the samples being taken of the articles seized, neither the photographs have been taken nor photographs have been produced in evidence nor the articles have been produced in Court and in this manner the safeguard provided under the Act has not at all been followed and hence, it creates a serious doubt about the search and seizure. There is no evidence that the Ganja was taken from which of the packets, whether taken from both the packets or from one packet and, hence, there is absence of the evidence that the sample sent was taken from the articles seized.

14. In the aforesaid view of the matter, I give the appellant benefit of doubt and hold that the prosecution has not been able to prove

the charges levelled against the appellant beyond all reasonable doubts.

The judgment of conviction and order of sentence dated 21.01.2014 passed in N.D.P.S. Case No. 06 of 2012 by Sri Jagdish Prasad Mishra, learned 2nd Additional Sessions Judge, Bhojpur, Arrah are hereby set aside and the appeal is allowed. Appellant, namely, Ganesh Nonia, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Kundan Sharma

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