

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.839 of 2013

(Arising out of Judgment and order of conviction dated 3.8.2013/5.8.2013 passed by the 1st Additional Sessions Judge, Motihari, East Champaran, in connection with NDPS Case No. 6 of 2008 arising out of Chiraiya PS.Case No. 4 of 2008)

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Raj Kumar Singh, son of Sri Laxman Singh, resident of village - Larua, P.S. -
Tajpur, District - Samastipur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Adv.
Mr. Lakshmi Kant Sharma, Adv.
Mr. Prem Shanker Kumar, Adv.
For the State : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 24-02-2016

Heard learned counsel for the Appellant and learned
Additional Public Prosecutor.

2. The Appellant has been convicted for the offence
under Sections 20 (b) (ii) (c) and 23 (c) of N.D.P.S. Act and sentenced
him to undergo rigorous imprisonment for 15 years as also a fine of
Rs.1,00,000/- for the offence punishable under Section 20(B)(ii)(c) as
also 15 years under Section 23(c) of NDPS Act with a fine of
Rs.1,00,000/- and in default of which, further rigorous imprisonment
of six months under each count by the 1st Additional Sessions Judge,

Motihari, East Champaran in a Judgment and order of conviction dated 3.8.2013/5.8.2013 in connection with N.D.P.S. Case No. 6 of 2008 arising out of Chiraiya P.S. Case No. 4 of 2008.

3. The Prosecution case according to the Informant Nand Kishore Shing (PW-2), is that on 4.1.2008 he intercepted a Bolero Jeep along with the rest of the raiding party, from where he arrested the present Appellant and co-accused who was declared juvenile and from the said Jeep, 52 packets of Ganja weighing about 3 quintals 16 Kg. was recovered. The seized articles of the Appellant were brought to the Police Station where the First Information Report was drawn up.

4. PW-1, Dinesh Prasad Singh, was one of the members of the checking party who corroborated the fact of interception of the Bolero Jeep, arresting of the Appellant and the co-accused and also recovery of 52 packets of Ganja. He stated that the place of occurrence was about 15 Meters away from the Police Station. The sacks of Ganja were not opened by him and he was merely standing there.

5. PW-2, Nand Kishore Singh, is the Informant who stated that on 4.1.2008, he intercepted the Bolero Jeep along with the search party and recovered 52 packets of Ganja weighing 3 quintals 16 Kg. He proves the seizure list and the signature of the witnesses on

the same as Exbt.-5. He stated that he did not give special mark on the 52 packets and was taken out from the Jeep and kept on the road. Thereafter, the same were put in Car and brought to the Police Station.

6. PW-3, Kamlesh Ojha, also the member of the search party, corroborated the version of the earlier witnesses on the point of recovery from the Bolero Jeep. He stated that the Ganja was kept in a red packet and in some bundles and each of the packets were weighed and separately which was roughly estimated between 4 ½ Kg. to 9 Kg. each.

7. PW-5, Prem Kumar and PW-6 Jitendra Prasad Singh are the next members of the search party who stated about apprehension of two accused from the Bolero Jeep and recovery of 52 packets of Ganja who were arrested and brought to the Police Station on the said date. There is nothing which is of note in their cross-examination.

8. PW-4, Maheshwar Paswan, who is the Investigating Officer is the most important witness for the purpose of disposal of this case. We find from his evidence that he states that on 4.1.2008, Nand Kishore Singh (PW-2) had given his Fard-beyan and produced Ganja, the Bolero Jeep and the accused persons before him upon which he had instituted the First Information Report and assumed



investigation. He stated that on 11.3.2008, he went to the Court of District and Sessions Judge, Motihari, along with the seized articles and sought direction for sending the samples for testing which was thereafter sent. He proves the forwarding memo as Exbt.-3. In cross-examination he was asked to explain as to whether he had sealed the articles, however, he stated that the seized articles were kept within the Police Station premises but he had not signed or put a seal on the same. All the packets had been bound separately.

He further stated that samples were drawn only from one packet on 7.3.2008 and between 7.3.2008 to 11.3.2008 the sample was kept in a sealed condition.

Apart from this, the Prosecution has proved the FSL Report (Exbt-7), which shows that the samples dated 7.3.2011 were received in the office on 11.3.2008 and on testing, three years later i.e. on 7.3.2011, it was to be found containing Ganja but the legitimate question which arises in the present Appeal is as to whether the Prosecution had adopted the correct procedure of drawing samples and sealing the articles.

9. From the evidence of PW-4, we find that no precaution was taken by the Investigating Officer to keep the seized articles between 4.1.2008 to 7.3.2008 i.e. about two months in safe custody or in the sealed condition. In such circumstances, the

possibility of articles having been tampered cannot be ruled out.

We also find that it is his own admission that the sample was drawn only from one packet which could be a contaminated source.

11. In the result, giving benefit of doubt to the Appellant, the Appeal is allowed and the Judgment and order of conviction and sentence dated 3.8.2013/5.8.2013 passed by the 1st Additional Sessions Judge, Motihari, East Champaran in connection with N.D.P.S. Case No. 6 of 2008 arising out of Chiraiya P.S. Case No. 4 of 2008 is, hereby, set aside.

12. The Appellant Raj Kumar Singh, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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