

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.585 of 2015

Against the judgment of conviction, dated 05.08.2015, and order of sentence, dated 11.0-8.2015, passed by Mr. Anand Singh, Additional Sessions Judge I-cum-Special Judge, N.D.P.S. Act, East Champaran at Motihari, in N.D.P.S. Case No. 109 of 2009/Trial No. 40 of 2010 arising out of Kesariya P.S. Case No. 179 of 2009

1. Bhikham Sahani, Son of Sri Ganu Sahani, Resident of village - Trilokwa, P.S. Keasariya, District - East Champaran Appellant

Versus

1. The State of Bihar Respondent

Appearance :

For the Appellant : Mr. Umesh Chandra Verma, Adv.

For the Respondent : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 26-04-2016

Heard the 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, and sentenced to undergo rigorous imprisonment for ten years and also a fine of rupees one lakh and in default of payment of fine to undergo rigorous imprisonment for six months.

3. The prosecution case, as alleged in the first information report, drawn on the basis of written report of Murli Mahohar Manjhi, P.W. 1, the informant that on secret information received at 11.00 A.M. on 20.11.2009 that at Trilokwa Chowk a truck bearing registration no. UP-12T-0178 is standing with ganja. On the said information, the informant, along with Assistant Sub Inspector of Police, Birendra Kumar Singh, not examined, Special Auxiliary Police Jawan, Kamali Yadav, not examined, Satya Narain Sharma, P.W. 2, Ashok Kumar, P.W. 3, Vishambhar Ram, P.W. 4, proceeded for the verification of the information and reached Trilokwa Chowk at 11.30 A.M., saw the truck standing by the side of the road and one person sitting in it. On

enquiry, the said person disclosed that the truck is vacant and he disclosed his name as Bhikhan Sahni as the khalasi (cleaner) of the said truck. He disclosed the name of driver of truck as Jasim Akhtar, who is said to have fled away on seeing the police. The police authorities, in presence of two independent witnesses, namely, Tripurari Singh, P.W. 5, and Vishambhar Sah, P.W. 6, searched the said truck and 13 packets of plastic bags of ganja were recovered, containing about 250 Kilograms. The said ganja was seized before the two independent witnesses from the truck and the seizure list prepared on which witnesses signed and a copy of the said seizure list was given to Bhikhan Sahni and he did not give any explanation about ganja. On the said written report a first information report lodged and the investigation proceeded. P.W. 7 the investigating officer, Parmeshwar Prasad stated that during investigation he got the fardbeyan, seizure list as well as 13 plastic packets, containing ganja and Bhikhan Sahni was also produced before the Court. He took the statement of the accused and recorded the further statement of the informant, the statement of the witnesses as well as the statement of the seizure list witnesses, inspected the place of occurrence. He also filed petition for examination of the seized articles to the Forensic Science Laboratory. The petition was filed for sending the sample of the article in sealed cover before the Special Judge and has proved the petition, marked as Exhibit 5. He also proved the forwarding letter and after investigation submitted the charge sheet. After submission of the charge sheet cognizance taken and the trial proceeded after framing of the charge and during the trial seven witnesses were examined on behalf of the prosecution, who are P.W. 1, Murli Manohar Manjhi, the informant. Satya Narain Sharma, P.W. 2, Ashok Prasad, P.W. 3, Bisheshwar Ram, P.W. 4, Tripurari Singh, P.W. 5, Bishwanath Sah, P.W. 6 and Parmeshwar Prasad, P.W. 7. However, the witnesses 1, 2, 3 and 4 are

members of the raiding party, who supported the prosecution case that they proceeded and saw the truck standing and one person was sitting in it and from the said truck 13 plastic packets of article seized and the seizure list prepared on which the witnesses signed. The seizure list prepared before the two independent seizure list witnesses, P.Ws. 5 and 6, and they have proved their signatures on seizure list. However, in cross-examination they have stated that at the time when they signed the seizure list, it was plain paper. P.W. 7 is the investigating officer.

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

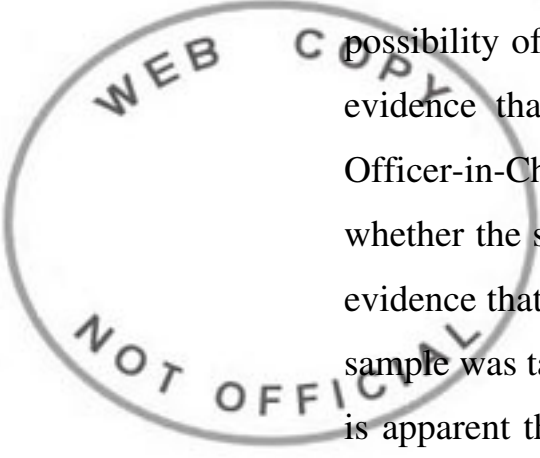
5. The learned counsel for the appellant has challenged the order of conviction and sentence, recorded by the trial Court. It is submitted that the prosecution has not been able to prove that the appellant was the khalasi (cleaner) of the said truck and the article, seized from the truck, was ganja in his knowledge. It has, further, been contended that there is no evidence that the articles, seized, were sealed at the place of occurrence. It has, further, been contended that the articles, seized, were not produced immediately before the Magistrate nor the articles were sealed with the seal of the Officer-in-Charge of the Police Station. It has, further, been contended that there is no mention where the seized articles were kept neither the articles were produced before the Court nor any certification of the articles, with it's photographs, as provided under Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985, neither the article, seized, has been produced in the Court nor any certificate regarding the destruction of the articles, seized, has been produced, hence, it casts a serious doubt about the seizure of the article or possession of the article. It has, further, been contended that the safeguard provided that the article, seized, be presented before a Magistrate, who shall make an inventory

of the same and the certification of the article with the photographs being drawn, but, neither the certification of the Magistrate nor the photographs of the articles that where it has been kept nor the articles have been produced.

6. The learned counsel for the State, however, does not refute the contention that there is nothing in the evidence to suggest that the articles, seized, with the seal of the Officer-in-Charge of the Police Station, there is no mention where the articles were kept.

7. From the perusal of the report of the Forensic Science Laboratory, it appears that the sample of the articles was sent vide D.R. No. 219, dated 07.04.2010, was received in the Forensic Science Laboratory on 15.04.2010 and the date of occurrence is 20.11.2009, but, there is no mention that where the articles were kept during the period, from the date of occurrence till the sample sent to the Forensic Science Laboratory. It is relevant to quote the evidence of P.W. 7, who has stated in his evidence that at the time when he taken the charge of investigation, he had not received any photographs. He has stated that the seized articles were received by him in open condition. He has, further, stated that the seized articles were sealed, but, there was no paper pasted on it and there was no thumb impression either of the informant or the accused or any signature on it. He has, further stated in his evidence in paragraph 12 that he had not sealed the seized ganja. He has, further, stated that he has got it weighed in a shop. He has not drawn any sample there.

8. Hence, from the evidence of the investigating officer, it is apparent that he did not receive the article in sealed condition neither he himself sealed the article nor put any seal of the Officer-in-Charge of the Police Station. It has not been mentioned that where the articles were kept. The date of occurrence is 20.11.2009, when the article was seized from the truck and the date of sending the sample to the Forensic



Science Laboratory is 07.04.2010, but, there is no evidence where the article was kept and whether the same was sealed or not, hence, the possibility of changing the article can not be ruled out nor there is any evidence that the articles, seized, were sealed with the seal of the Officer-in-Charge of the Police Station. There is no evidence that whether the sample taken from each of the packets, seized, nor there is evidence that how the sample was taken. There is no evidence whether sample was taken from one packet or from each of the packets, hence, it is apparent that there is complete violation of Sections 52A and 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Further, the article seized has not been produced nor even the sample produced as exhibited in the case. Hence, it is difficult to say whether appellant was in possession of the article, seized, nor there is evidence to connect the Forensic Science Laboratory report with the article, seized.

9. Having regard to the facts and circumstances of the case that the articles, seized, were not kept in a sealed cover with the seal of the Officer-in-Charge of the Police Station nor it is mentioned that where the articles were kept for about 4 to 5 months, when the sample was taken nor there is mention that whether the sample was taken from each of the packets nor it is mentioned that sample was taken from each of the packets, hence, it casts a serious doubt and the appellant is entitled to benefit of doubt.

10. I find and hold that the prosecution has not been able to prove the charge beyond reasonable doubt. The trial Court did not go into the question of non-production of the article, seized, regarding the place where the articles kept nor gone into the question where the articles, seized, were kept with the seal of the Officer-in-Charge of the Police Station and drawing the sample of the article, seized, after four months without having proved it's custody casts a serious doubt about the possession of the article and whether the sample taken from articles,

seized, to connect that the article, seized, was ganja.

11. Hence, the order of conviction and sentence, recorded by the trial Court, is hereby not sustainable and is **set aside**.

12. The appeal is **allowed**.

13. The appellant, who is in jail, is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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