

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (SJ) No.2 of 2015

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The State of Bihar.

.... Appellant/s

Versus

1. Umesh Sah, Son of Rajendra Prasad Sah.

2. Sanjeev Sah, Son of Bijay @ Dalesh Sah.

Both Resident of Village- Beldaur, P.S.- Beldaur, District-
Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiwesh Chandra Mishra

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 28-11-2016

The I.A. No. 1914 of 2015 has been filed seeking
condonation of delay in preferring the present appeal.

2. For the reasons stated in the application, this
Court is satisfied that there was sufficient cause, which
prevented the appellant from filing the appeal within time.

3. Delay in filing the appeal is, hereby, condoned.

4. I.A. No. 1914 of 2015 is, accordingly, allowed.

5. The State of Bihar has preferred this appeal,
under Section 378 (1) (3) of the Code of Criminal Procedure,



aggrieved by the judgment and order, dated 08/04/2015, passed by the learned 1st Additional Sessions Judge, Khagaria, in Special Case No. 3 of 2014, arising out of Beldaur P.S. Case No. 50 of 2014, whereby, he has recorded acquittal of respondents, who stood charged of the offence punishable under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as the "NDPS Act"*).

6. According to the case of the prosecution, in course of checking of vehicles, one Tata Indica vehicle was made to stop. The moment the said vehicle stopped; one person came out of it and started fleeing away towards the maize field in the eastern-southern side. There were two other persons sitting in the said car, who were also apprehended, but the third person managed to escape. On search having been conducted, two bags of *Ganja*, weighing 60 Kg., were seized. Cash of Rs. 4050/- was also seized from the possession of respondent No. 1. On completion of investigation, the police submitted charge-sheet, whereafter, cognizance was taken under Sections 20/22 of the NDPS Act, and the case was transferred to the file of learned 1st Additional Sessions Judge, Khagaria. Since the respondents denied the charge, the trial commenced.

7. At the trial altogether 5 witnesses were



examined by the prosecution including seizure list witnesses, namely, Azad Sah, P.W.-1, and Ramchandra Paswan, P.W.-3. The Sub-Inspector of Police, namely, Sanjay Kumar Singh deposed as P.W.-2, whereas, the informant, namely, Vishwaranjan Singh deposed as P.W.-4. The Investigating Officer of the case, namely, Raj Kumar Singh was examined as P.W.-5.

8. What transpires from the materials available on the record that the prosecution witnesses admitted that seizure list witness, P.W.-1 was the driver of the police vehicle though illegally engaged by the police personnel as driver. The said Azad Sah (P.W.-1) denied of having any knowledge about the occurrence and deposed that his signature was taken at 12.00 noon on a plain paper. This has to be kept in mind that time of occurrence was described as 4.45 A.M. in the First Information Report. The other seizure list witness, P.W.-3 was the Chowkidar. P.W.-4, the informant of the case, admitted during the cross-examination that he had not taken any sample of seized material for chemical examination from the seized bags and the seized *Ganja* was not sealed at the place of occurrence.

9. Having considered the evidences on record, learned court below recorded acquittal of the respondents of the offence punishable under Section 20 (b) (ii) (B) of the Act.

10. It is evident from the materials available on

the record that the seized *Ganja* was not produced at the trial. No sample of the seized material was drawn and, therefore, there was no question of any report from the Forensic Science Laboratory at the trial. The seizure list witnesses were apparently not independent witnesses. In such circumstance, if learned trial Court recorded acquittal of respondent Nos. 1 and 2, I do not find any reason to interfere with the same.

11. The judgment and order, under appeal, does not suffer from any legal infirmity, requiring this Court's interference in an appeal preferred against the order of acquittal.

12. This appeal has no merit and it is, accordingly, dismissed at this stage itself.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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