

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1249 of 2011

Arising out of N.D.P.S. Case No. -25 Year- 2007 Thana -null
District- EASTCHAMPARAN (MOTIHARI)

=====

Sunil Patel S/o Sri Thag Patel Resident of Village- Siswa, P.S.-
Raxaul, District- East Champaran.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ansul, Adv.

: Mr. Archil Rajpal, Adv.

: Mr. Shreyanshu, Adv.

For the Respondent/s: Mr. Ashwini Kumar Sinha, APP.

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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: 26-05-2016

01. The Appellant has been convicted under Section 20(b) of the N.D.P.S. Act and sentenced to R.I. for fifteen years and fine of Rs. 1,00,000/- by a judgment of conviction and order of sentence dated 26.08.2011/02.09.2011 by the Additional Sessions Judge-I, East Champaran at Motihari in N.D.P.S. Case No. 25 of 2007.

02. The case of the prosecution according to the Officer In-charge, Raxaul Rail Police Station, P.W. 4, Gopal Prasad Singh is that on 17.04.2007, the Appellant was purportedly traveling with a bag on a train of 13 Kgs. "Charas" contained in 26 packets.

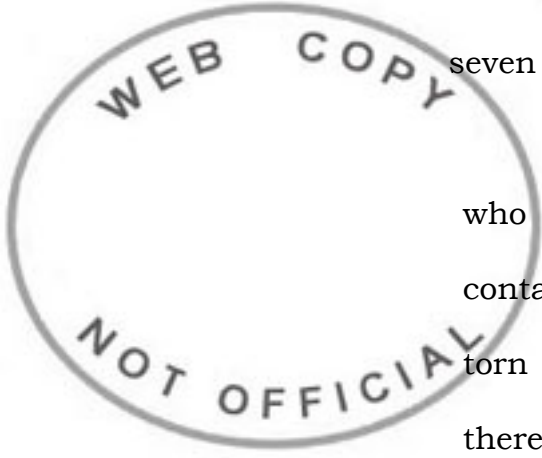
03. The Appellant was charged, tried and convicted as mentioned above. During trial the prosecution examined seven witnesses.

04. P.W. 1, Ali Hasan is part of the raiding team who searched the bag lying near the Appellant which contained 26 packets of "Charas". One of the packets was torn off and they saw some black stick type of material therein. The Appellant stated the "Charas" weighed 13 Kgs. He stated that ASI, Vijay Kumar Mishra, P.W. 5 had prepared the seizure-list. He signs on the seizure-list as (Exhibit-1).

As noted above, he does not say that the "Charas" was weighed or how the sample was drawn.

05. P.W. 2, Ajay Kumar Rai is also a member of the raiding team and supported the function of P.W. 1 to the extent that a black bag was recovered from near the Appellant in the train and wrapped in a brown plastic was "Charas". One of the packets was torn off which appeared like "Charas". The Appellant stated that the total weight was 13 Kgs. He stated that he did not know as to whether samples were drawn from the seized articles.

06. P.W. 3, Ashok Kumar Singh is also part of the raiding team who was instructed to search the train whereafter the Appellant was arrested with a bag in which 26 packets of "Charas" was kept in Sticks. The Appellant disclosed that the "Charas" was 13 Kgs. He was a signatory to



the seized article and he proves the same as (Exhibit-1/2).

The Appellant was thereafter handed over to the Raxaul G.R.P. Police Station.

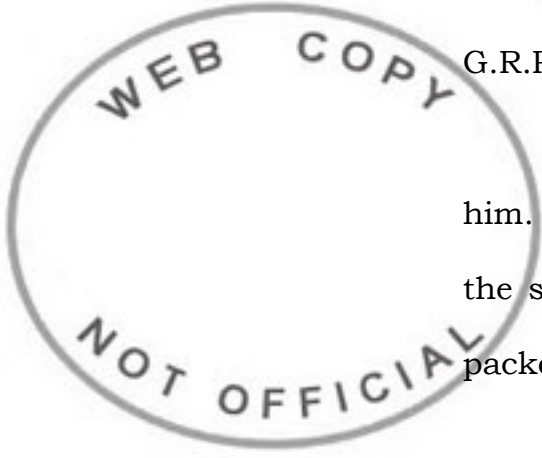
He stated that the samples were sealed in front of him. However, he did not know as to from how many packets the sample was drawn nor did he know as to in how many packets the samples had been kept.

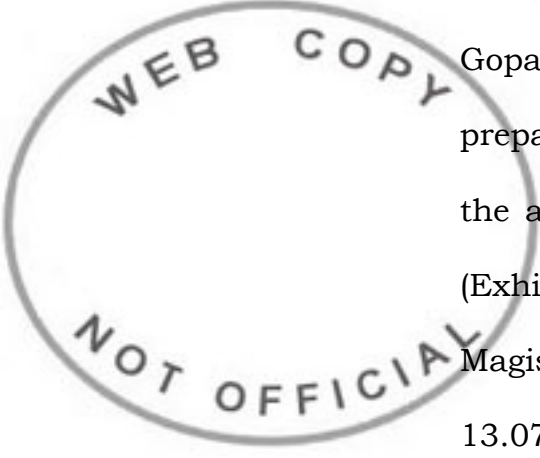
07. P.W. 4, Gopal Prasad Singh is the Informant who corroborated the fardbeyan in all material particulars and that the articles were seized from the possession of the Appellant.

In his entire evidence, he does not say anything about weighing the incriminating article or of the procedure adopted in drawing samples.

08. P.W. 5, Vijay Kumar Mishra is the next witness and also member of the raiding party. He stated that the Appellant on suspicion was caught traveling in a train with a bag containing "Charas Sticks". He disclosed his name as the present Appellant. He prepared the seizure-list and also gave one to the Appellant who also signed it as (Exhibit-4). He disclosed that the Appellant had confessed that the article was "Charas" and they had opened one packet and "Charas" was detected.

In the entire evidence, he has not stated about weighing or drawing of samples of the incriminating article.





09. P.W. 6, Pramod Kumar is the Investigating Officer who instituted the case on the written Complaint of Gopal Prasad Singh, P.W. 4 and arrested Appellant. He prepared the seizure-list which is marked as (Exhibit-5) and the application for sending the sample for testing to FSL as (Exhibit-6). He stated that Mr. S.K. Shrivastava, Judicial Magistrate, 1st Class had been deputed to seal the sample on 13.07.2007 and thereafter it was sent to FSL, Muzaffarpur. He proves the FSL Report as (Exhibit-7). He then submitted charge-sheet on finding the accusation true. He stated that he did not weigh the incriminating articles.

He also does not state about the mode of drawing samples.

10. P.W. 7, Suresh Paswan is a Technical Officer of the FSL who proves the chemical analysis report dated 17.08.2009 as (Exhibit-1/1) i.e. more than two years later.

In his evidence, we do not find anything of relevance.

11. On going through the evidence of the aforesaid witnesses, we find that even though the article tested positive but no witness has stated that the alleged “Charas” was weighed and found to be 13 Kgs. Nor has any witness stated about the procedure in which samples were drawn or where the samples were kept between the period of seizure and sending it to the FSL. In such circumstances, it is difficult to

maintain the conviction of the Appellant under any provision of the NDPS.

12. In view of such, for the reasons of complete paucity of evidence in respect to maintaining the sanctity procedure of sampling and sealing, the Appeal is allowed and the judgment of conviction and order of sentence dated 26.08.2011/02.09.2011 passed by the Additional Sessions Judge-I, East Champaran at Motihari in N.D.P.S. Case No. 25 of 2007 is, hereby, set aside. The Appellant is discharged from the liabilities of his bail bonds. The Appellant, Sunil Patel who is in custody shall be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	X
Uploading Date	28.05.2016
Transmission Date	28.05.2016