

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.918 of 2011

(Against the Judgment of conviction dated 25.07.2011 and Order of sentence dated 28.07.2011 passed by the 1st Additional District and Sessions Judge-cum-Special Judge, Araria, in Special Case No.13 of 2006/Trial No.18 of 2006).

=====

Munesh Kumar @ Munesh Kumaar Singh, son of Late Kamal Singh, resident of Village- House No. 22/21, Nandgram Colony, P.S- Gaziabad, District- Gaziabad (U.P).

.... Appellant.

Versus

1. The State of Bihar.
2. Union of India.

.... Respondents.

=====

Appearance :

For the Appellant : Mr. Vikram Deo Singh, Advocate
For the State : Mr. Ajay Mishra, A.P.P.
For the Union of India : Mr. S.D. Sanjay, A.S.G.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 25-01-2016

The Appellant has been convicted under Section 20(b) of the N.D.P.S. Act and sentenced to rigorous imprisonment for 15 years and fine of Rs.2,00,000/-, in default of which, further rigorous imprisonment for three years vide Judgment of conviction dated 25.07.2011 and Order of sentence dated 28.07.2011 passed by the 1st Additional District and Sessions Judge-cum-Special Judge, Araria, in Special Case No.13 of 2006/Trial No.18 of 2006.

2. The case of the prosecution, according to the Complainant



Mukesh Kumar Bhardwaj, Inspector Customs (Preventive), Land Customs Station Jogbani (P.W.2), is that on 12.09.2006, a truck bearing Registration No.NAIKH-9336 was intercepted at Border Check Post, Jogbani by the Officers of the Customs and Appellant was arrested from the said truck. A secret cavity was found on the floor of the truck which was forcibly opened and from the same 116 packets of Ganja weighing 432.900 kilograms was recovered. The Appellant was interrogated by the officials and, thereafter, the prosecution report was instituted on 13.11.2006 after receipt of the F.S.L. Report dated 25.09.2006.

3. On going through the evidence of the witnesses, we find that P.W.1 Gopal Sharma is one of the persons on the point of seizure. He was an Electrician and independent witness who stated that on the date of occurrence, he saw some persons being interrogated and a secret cavity of the truck was forcibly opened, from which 116 packets of Ganja was recovered which was weighed and it was found to be 432.900 kilograms. He signed on the 'Panchnama' alongwith one Vijay Sah, which he identified, marked as Ext.1. He also signed on the seizure list alongwith Vijay Sah, which is marked as Ext.2. The statement of the Appellant was recorded in his presence, which is marked as Ext.3. Thereafter, an interrogatory was also put to the Appellant which he signed as Ext.4. In cross examination, surprisingly he gave a confusing statement with regard to the weight of the goods. He stated that one packet contained 5

kilograms whereas the second packet contained 4 kilograms and third packet contained 3 kilograms. What it means, one does not really know.

4. P.W.2 Mukesh Kumar Bhardwaj is the Complainant, who stated that on 12.09.2006 at about 11.00 A.M. he got secret information about a truck carrying Ganja at which a person present on the truck was intercepted and the Appellant was arrested. 'Ganja' was found in the secret cavity which was cut opened in presence of the witnesses packed in 116 packets weighing 432.900 kilograms. The same was seized of which seizure list was prepared in presence of the witnesses marked as Ext.1/1. He also prepared the seizure list which is marked as Ext.5. He drew the samples from the packets in lots of 1 to 40, 41 to 80 and 81 to 116 and sent it for testing. He proves the analysis report (Ext.6). He also proves the statements of the Appellant, which is Ext.7 and the interrogatory (Ext.4/1) on which there are signatures of the witnesses, accused, Superintendent and himself. He stated that the Appellant admitted his guilt whereafter he was produced before the Special Judge. He prepared the Prosecution Report (Ext.8). In cross examination, we find that he explained the entire procedure in terms of time as to when truck was seized and the articles recovered. He stated that the Ganja was divided in three groups of 5 to 6 packets each after tearing slightly of major packets but the sample was not collected from each packet.

5. P.W.3 Avinash Kumar Singh was the Customs



Superintendent on the Land Customs Station Jogbani who corroborated about the recovery of Ganja from the secret cavity of the truck on which the Appellant was boarded. He stated that when the Appellant was questioned, he denied there being any good or contraband on the truck and he refused its checking before the Magistrate. However, when the secret chamber was forcibly opened, Ganja was recovered. They also found two number plates and the original documents of the vehicle. The Appellant allegedly admitted his guilt. In cross examination, there is nothing to discredit the factum of seizure and recovery.

6. P.W.4 Samir Kumar Sinha was the Customs Inspector at Jogbani on 12.09.2006 and he also corroborated the evidence of P.W.3 on material particulars. In cross examination, he stated that the checking was done in the office and the sample of seized material was prepared in 6 packets.

7. P.W.5 Satyendra Kishore Lal was also the Customs Inspector on 12.09.2006, who stated about the department officials having stopped the truck of the Appellant and interrogation of the driver and recovery of Ganja from the secret chamber. In cross examination, he stated that he was shown Ext.9 for the first time which is not germane to the issue.

8. P.W.6 Sanjeewan Mochi was Hawildar in Jogbani Customs Office who stated that he on direction of the Senior Officers he

stopped the vehicle in question and took it to the office and checked it. He learnt that Ganja was recovered from the truck and the Appellant was driving the said truck. He does not say anything in the cross examination which is to be noted down.

9. P.W.7 Indrajeet Prasad Singh was also the Customs Superintendent at Jogbani on the date of occurrence who corroborated the earlier statements of the witnesses. He stated, in cross examination, that he had not taken any action in the matter.

10. On going through the evidence on record, we find that whereas P.W.1, P.W.2, P.W.3, P.W.4 , P.W.5, P.W.6 and P.W.7 are corroborative witnesses on the point of interception of the truck, Appellant being found on it, a secret chamber being present as also recovery of Ganja from the secret chamber. Their evidence is enough to conclusively prove that the Appellant was in conscious possession of the article which was present in the secret chamber of the truck which he was driving. Ext.6 which is F.S.L. Report confirms that the samples which had been tested were indeed contained Ganja. We also find that the Ext.6 is dated 25.09.2006, i.e., it has been tested within the same month of the recovery which further leaves no scope for doubt in regard to the veracity of the prosecution case. P.W.2 Mukesh Kumar Bhardwaj, Complainant, himself has left no manner of doubt in regard to the manner of procedure followed by him in intercepting the truck, apprehending the Appellant

from the same, opening the secret chamber of the truck, recovery of incriminating articles, drawing the samples and getting it tested immediately.

11. We may at the end clarify that the conviction of the Appellant is under Section 20(b) of the N.D.P.S. Act whereas it should have been under Section 20(ii) (C) N.D.P.S. Act. However, we note that the charge was framed saying that the Appellant was found in illegal possession of 432.900 kilograms of contraband Ganja which he was carrying by a Truck bearing Registration No.NAIKH-9336 which shows that the Appellant knew fully well that he was to answer the charge of carrying Ganja of commercial quantity and hence no prejudice would be caused to him if we convert his conviction to one under Section 20(ii) (C) N.D.P.S. Act while maintaining his sentence.

12. Hence, for the above reasons, we find no merit in this Appeal which is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Manish Kumar/
A.F.R.**

U		T	
---	--	---	--