

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 14.12.2011, and order of sentence, dated, 19.12.2011, passed by Shri Sultan Muzaffer, 1st Additional Sessions Judge-cum-Special Judge, Bettiah in Sessions Trial No. 37 of 2011, arising out of Balthar P.S. case No. 05 of 2011)

Criminal Appeal (DB) No.43 of 2012

Dhiraj Kumar, S/O Ramashish Kumar, R/O Village- Sikarpur, P.S. Sikta, Distt-West Champaran, Bettiah

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar, Advocate

Mr. Neeraj Raj, Advocate

Mr. Sunil Prasad, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-06-2016

The instant appeal has been filed by the accused-appellant, Dhiraj Kumar, against judgment of conviction, dated 14.12.2011, under Sections 20 (b) (ii) (c) and 22-C of Narcotic Drugs and Psychotropic Substances Act, 1985, passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Bettiah, in Sessions Trial No. 37 of 2011, arising out of Balthar P.S. case No. 05 of 2011. Following his conviction, the accused-appellant, Dhiraj Kumar, has been sentenced, by order, dated 19.12.2011, to suffer imprisonment



for 12 years and pay a fine of Rs.1,00,000/- (One Lakh), for his conviction under Section 20 (b) (ii) (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 and has been further sentenced to suffer imprisonment for 12 years and pay a fine of Rs.1,00,000/- (One Lakh), for his conviction under Section 22-C of Narcotic Drugs and Psychotropic Substances Act, 1985, and, in default, to pay the fine, suffer rigorous imprisonment for two years. However, both the sentences have been ordered to run concurrently.

2. The prosecution case as made out in the written report of Md. Akhtar, addressed to S.H.O. Balthar (Sikta) police station, on 21.01.2011, in short is as follows:

The informant, a S.S.B. Personnel stated that at about 03.05 P.M., he was informed by the villagers that two persons on a motorcycle are carrying *charas*. On receipt of the information, he along with the other officials proceeded to village Lian Parsa. As soon as they reached the village, they saw accused persons fleeing on two motorcycles. In course of fleeing, one motorcyclist collided against a minor girl and fell and was apprehended. However, the other accused person succeeded in fleeing on his motorcycle. On query, the apprehended accused disclosed his name as Dhiraj Kumar. On search, 16 Kg of *charas* was recovered from the dicky of the motorcycle. The accused and the seized *charas* were handed over to

local police station.

3. On the basis of the written report of the informant, namely, Md. Akhtar, a SSB Personnel, Balthar P.S. Case No. 05 of 2011 was registered under Sections 20, 22, 23, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

4. On completion of investigation, charge-sheet was submitted, where after cognizance of offence was taken and the case was committed to the Court of Sessions for trial.

5. The prosecution in support of its case examined five witnesses, namely, P.W.1 Md. Akhtar is the informant of the case, P.W. 2 Dharmendra Kumar and P.W. 3 Shyamal Laskar are eye witnesses of the occurrence. P.W. 4 Udhab Khataniyar is a corroborative witness and P.W. 5 Pankaj Kumar Srivastava is the investigating officer of the case. The prosecution also produced documentary evidence in support of its case i.e. Ext. 1 is Apprehension Report, Ext.2 is written report, Ext. 3 is confessional statement of accused, Ext. 4 is report of Forensic Science Laboratory and Ext. 5 is seizure list.

6. In support of its case, the defence has also examined three witnesses, namely, D.W.1 Jai Narayan Ram, D.W. 2 Mahabir Ram and D.W.3 Bagar Ram. The defence also produced documentary evidence, namely, Ext. A, which is certified copy of

complaint case no. 228-C/2011, Ext. B, C and D are certified copies of order-sheet of Tr. No. 2722 of 2011 and depositions of Vishwanath Rai, Gharib Ram and Mozahir Beddi.

7. The accused in his statement under Section 313 of the Cr.P.C. has denied the guilt and claimed to be innocent.

8. As noticed earlier, the prosecution in order to establish its case examined five witnesses. The informant (P.W. 1) in his evidence fully supported the prosecution case narrated by him in his written report. P.W.-2 Dharmendra Kumar, another S.S.B. personnel, too supported the prosecution case. He stated that he along with the informant went to the place of occurrence, where they found one motorcycle fallen on the ground. The person riding the motorcycle was apprehended by the local villagers. On search, *charas* was seized from the dickey of his motorcycle. The apprehended accused and seized *charas* were handed to local police.

9. P.W. 3 is also an official of SSB and has also corroborated the prosecution case. In his evidence, he stated that on receipt of information, he along with others went to village Lain Parsa, where they saw one motorcycle lying on the ground having dashed a village girl. The villagers had caught hold of that person. He also stated that 16 Kg of *charas* was recovered from the dickey of the motorcycle.

10. P.W. 4 is another official of S.S.B. camp, who too had fully corroborated the statement of the informant as well as statement of P.Ws. 2 and 3. He stated that the officer-in-charge of local police came to the place of occurrence on receipt of information, to whom the accused as well as the seized *charas* were handed over.

11. P.W. 5 Pankaj Kumar Srivastava is the investigating officer of the case. In his evidence, he stated that on 21.01.2011, he was posted at Bhangaha police station. At about 18 hours, he received a petition from the informant (Md. Akhtar) about the incident. He took the accused in custody, which was handed over by the informant and local villagers. He also took into custody the seized 16 Kg *charas*, which was also handed over to him. He also seized the motorcycle lying on the ground. On the basis of the written report, he instituted a regular F.I.R. under Narcotic Drugs and Psychotropic Substances Act, 1985. He recorded the confessional statement of accused Dhiraj Kumar (Ext.3), wherein he admitted his guilt of carrying *charas*.

12. On the strength of these evidences, Mr. Sinha, learned Additional Public Prosecutor submits that there are incriminating materials to establish the charge against the accused-appellant. On the other hand, Mr. Dhananjay Kumar, learned counsel



for the accused-appellant, submits that the prosecution case suffers from a number of illegalities. He submits that *charas*, which is said to be seized from the dickey of his motorcycle, was not sealed and as such it can not be said with conviction, whether the samples, which were sent to F.S.L. for examination were drawn from items seized from his motorcycle. Learned counsel next submits that the samples, which were being sent for F.S.L. examination, were not taken in his presence or in presence of independent witnesses. On the basis of these materials, learned counsel submits that there has been a complete violation of Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985, which is mandatory in nature. Learned counsel in this context relied upon decision in case of **Union of India Vs. Mohanlal & Another**, reported in **2016 (2) PLJR 132 SC** and in case of **Pintu Bhagat vs. The State of Bihar**, reported in **2016 (1) PLJR 771**. Besides this, the samples were sent to F.S.L., after a long delay of 4 months. In support of his submission, learned counsel has relied upon Division Bench decision in case of **Timal Raut Vs. The State of Bihar**, reported in **2003 (3) PLJR 224** and again Division Bench decision in case of **Rajiv Hussain @ Raju Hussain Vs. The State of Bihar**, reported in **2014 (4) PLJR 170**.

13. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do



not find force in the contentions of learned counsel for the appellant. The provisions of NDPS Act do require compliance, but whether any non-compliance would be fatal to the prosecution or not, has to be decided on the facts and circumstances of each case. The depositions of witnesses indicate that there was recovery of 16 Kgs. 'charas' from the motorcycle, which was being driven by the appellant and another motorcycle of his accomplice. The proforma for seizure which has been exhibited, clearly mentions that it was "chance encounter" and thus the provision of Section 42 of the NDPS Act may not be strictly applicable, moreso for the reason that though there was information of persons carrying 'charas' but the mode and modality of recovery in the present case and arrest of the appellant was mere chance and not upon search and seizure by any raiding party. The further fact, that even the defence witnesses have not denied the recovery of 'charas', but have tried to impute that the same were planted, does not merit consideration for the reason that such huge quantity was not required to be planted for getting the appellant convicted, as for implicating one person a consignment of 16 Kgs. worth crores of rupees in the open market would not have been handed over to the police by any person who would only want to implicate the appellant. The defence has neither shown nor suggested to any of the prosecution witnesses with regard to any

enmity with the appellant, which would indicate false implication. The sole ground to indicate false implication is based on Compliant Case No. 228-C of 2011 filed by the appellant against the prosecution side, but the same is of no help to the appellant since the present occurrence is of 21.01.2011, whereas the complaint was filed only on 03.02.2011, which clearly has been done with a view to make a ground for the defence, but the same being much after the actual date of occurrence is not worth giving importance. The point canvassed by learned counsel for the appellant with regard to there being discrepancy in the place of occurrence i.e., whether it was Pillar No. 409/1 or village Lain Parsa is also not of much significance in the present case, since admittedly the accident took place near Pillar No. 409/1 and the appellant was caught by the persons and kept in the village where he was handed over along the 'charas'. Thus the same is logically explained. The decision relied upon by learned counsel for the appellant in the case of **Union of India vs. Mohanlal** reported as **2016 (2) PLJR (SC) 132** only lays down the procedure which the investigating agency is required to follow for which direction has been given. Similarly, the decision of the learned Single Bench in the case of **Pintu Bhagat vs. State of Bihar** reported as **2016 (1) PLJR 771** in favour of accused, was particularly based on premise that two independent witnesses to the

production-cum-seizure list, did not support the prosecution case before the Court and at the request of the Public Prosecutor, were declared hostile, as they had categorically stated in their depositions, that no contraband was ever seized or produced in their presence. Thus, the said decision also cannot be said to cover the present case. We also find that the view taken by learned Trial Court and the reasonings given to arrive at the finding of guilt and subsequent conviction and sentencing is sound and needs no interference.

14. Accordingly, we find no merit in the appeal and the same stands dismissed.

(Samarendra Pratap Singh, J.)

(Ahsanuddin Amanullah, J.)

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