

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.394 of 2014

(Against the Judgment of conviction dated 10.04.2014 and Order of sentence dated 16.04.2014 passed by the 5th Additional Sessions Judge, Muzaffarpur, in Custom Case No.20 of 2008).

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Prem Lata @ Puja, aged about 35 years, wife of Raj Kishor Chaudhary, resident of village Kuraghat, Bishunpurwa Engineering College Chowk, P.S. Gorakhpur Cant, District Gorakhpur, Uttar Pradesh.

..... Appellant.

Versus

Union of India, through Custom.

..... Respondent.

with

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Criminal Appeal (DB) No. 422 of 2014

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Sumit Kumar Srivastawa @ Sumit Srivastava, aged about 35 years, son of Binod Kumar Srivastava, resident of village-Sahuli, P.S. Hussainganj, District-Siwan.

..... Appellant.

Versus

Union of India, Through Custom

..... Respondent.

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Appearance :

In both the Appeals:

For the Appellant : Mr. Pramod Kumar Singh, Advocate.

For the Union of India : Mr. Anshuman Singh, C.G.C., U.O.I.

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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: 17-05-2016

Both the Appellants have been convicted under Section 20b(ii)C and 23 of the N.D.P.S. Act and sentenced to undergo rigorous imprisonment for 12 years and fine of Rs.1,50,000/- under both counts and in default of payment of fine to undergo further

simple imprisonment for two years under both counts vide Judgment of conviction dated 10.04.2014 and Order of sentence dated 16.04.2014 passed by the 5th Additional Sessions Judge, Muzaffarpur, in Custom Case No.20 of 2008.

2. The case of the prosecution, according to Pawan Kumar Shandliya (P.W.1), who was the Inspector of Customs, Muzaffarpur, is that after receiving on secret information from unknown sources, two passengers, namely, the present Appellants, were apprehended from a bus at Motipur. In course of search even while no incriminating articles was recovered from their personal possession but a bag near the Appellant Prem Lata alias Puja and a trolley bag of Appellant Sumit Srivastava recovered from the dicky of the bus were searched from which three packets (1.5 Kgs) and 17 bags (8.5 kgs.) respectively were recovered from the bags. A 'Panchnama' was prepared and after completing the seizure formality, the three samples from each bag were drawn and were sealed in presence of the accused persons and independent witnesses upon which their signatures were taken for Chemical Examination Report. The Chemical Test revealed it to be 'Charas' and, thereafter, the present complaint was filed.

3. During trial, the prosecution examined altogether 10 witnesses.

4. P.W.1 Pawan Kumar Shandliya is the Complainant,



who repeated the statement given in the written statement and that two suspect passengers disclosed the names as the present Appellants and from the trolley bag and small bag, small packets each containing 1/2 kilograms 'Charas' was recovered. The Appellants confessed their guilt. He proves the Seizure List as Ext.1, the 'Panchnama as Ext.2 and the interrogatory statements as Exts.3 and 4. He further stated that after the 'Charas' was seized, from each of the bags, three samples of 25 grams were drawn upon which the accused and the witnesses also signed. One of the samples was sent to Kolkata and he proves the Test Report as Ext.5 as also the written report as Ext.6.

In cross examination, he confirmed that no incriminating articles was recovered from the possession of the Appellants and the trolley bag was kept in the dicky of the bus whereas the bag was lying near one of the Appellants. He further stated that he did not remember as to whether the trolley bag was locked or not as also confirmed that the bag which was in the possession of the Appellant Prem Lata was not locked. He had seized all the articles including the bags. He stated that at the time of drawing the samples no Magistrate was present. He further disclosed that after the articles were seized, they were kept in the Customs Godown which was certified by a Magistrate who had drawn one of the representative samples which he proves as Ext.10. He further admitted that at the time of

certification and drawing the representative samples, it was not noted as to from which of the bags, the samples were drawn. There is nothing else which is of note in his cross examination.

5. P.W.2 Arvind Kumar Singh was a member of Preventive Team who had gone to Motipur stated that at the time of occurrence and search of the bus, two persons were apprehended, who disclosed their names as the present Appellants and search was conducted in his presence. He confirms that 8½ Kilograms 'Charas' was recovered from the trolley bag which was owned by the Appellant Sumit Srivastava and 1½ Kilograms 'Charas' was recovered from the red bag owned by the Appellant Prem Lata. He proves his signature on the interrogatory statements of both the Appellants as Exts.7 and 8 respectively.

However, in cross examination, he stated that he was not present alongwith the Preventive Team which had recovered the incriminating articles from the possession of the Appellants. He was at the Customs Office where the present Appellants were brought alongwith the bags. He also confirms that no Magistrate was present when the sample was drawn and three samples were drawn but he did not remember the exact weight.

6. P.W.3 Sanjay Kumar Singh stated that on secret information two bags were recovered from the possession of the

Appellants, who were brought to the Customs Office and interrogated. He stated that it was in his presence from both the bags, three separate samples were drawn. However, a 'Panchnama' was also prepared in his presence and this was done by P.W.1 Pawan Kumar Shandilya. He also confirms that the trolley bag was recovered from the dicky of the bus and red bag was recovered from the bus itself.

7. P.W.4 Mina Devi was a Constable in the Customs Department and she was part of the Preventive Team who had searched the bus. She stated that on search of the Bus, the present Appellants were apprehended as also the bags containing 'Charas' were recovered. She proves her signature on the seizure list and 'Panchnama' as Exts.1/1 and 2/1.

In cross examination, she stated that the samples were not drawn in her presence.

8. P.W.5 Dipak Kumar Chaudhary was also a Customs Inspector, who stated that he had given the custody receipt in regard to deposit of the seized articles in the Customs Godown. He stated that 10 Kilograms of 'Charas' was kept in the Godown seized in connection with the present case.

In cross examination, he showed his ignorance with regard to the knowledge as to what was there in the sealed packet.

9. P.W.6 Rajiv Kumar, a seizure list witness, stated that

while he was at Motipur, a Preventive Team checked a bus and from the possession of two persons, two bags, one from each, were recovered which contained 'Charas'.

He proves his signature on the 'Panchnama' and the Seizure list as Exts.1/2, 2/2, 3/1 and 4/1.

10. P.W.7 Kameshwar Tiwary is another witness who has stated likewise and proved the signature on the 'Panchnama' and the seizure list as Exts.1/3 and 2/3 as also his signature on the confessional statements of the two accused as Exts.3/2 and 4/2.

There is nothing which is of note in his cross examination.

11. P.W.8 Rajendra Prasad Singh is a formal witness who proves the certificate of the Judicial Magistrate and the certification of the seized articles as Ext.9.

In cross examination, he tried to explain the procedure of preparation of interrogatory etc. but that is of no relevance in the present case.

12. P.W.9 Sahdeo Chaudhary stated that on the date of occurrence, two Appellants were apprehended with one bag each from which 'Charas' was recovered. He stated that he was at the office when the seizure list was prepared and the articles were weighed.

13. P.W.10 Narendra Kumar was Godown Incharge and he is also a formal witness with regard to the seized 'Charas' of

totaling 10 Kilograms which was kept in the godown. He proves the Godown Register as Ext.11.

There is nothing which is of note in his cross examination.

14. On going through the evidence of the aforesaid witnesses we find the prosecution has well proved its case that the two Appellants were traveling on the bus on the fateful day, who were apprehended with bags purportedly belonging to them which contained 'Charas'. A seizure list of the seized articles was prepared. Three samples were drawn from each of the bags. Two of the samples were sent for testing to the Chemical Laboratory, which was found positive. The notable point is that both the Appellants had confessed their guilt in their interrogation, which is admissible.

15. However, since it is relevant for maintaining the conviction of the Appellant under Section 20(b)(ii)(C) of the N.D.P.S. Act, the Court would have to consider as to whether, in fact, the Appellants were found in possession of commercial quantity of 'Charas'. In this case, we find that the admitted position is that three samples were drawn from each of the bags weighing 1/2 K.G. i.e. less than commercial quantity but more than small quantity whereas two of them were sent for testing. There is no evidence that the contents of the packets were mixed together before drawing samples meaning thereby that even if the two samples were drawn and found positive

the Appellants could be convicted for violation of Section 20(b)(ii)(B) i.e. lesser than commercial quantity but greater than small quantity and not (C) i.e. commercial quantity of the N.D.P.S. Act. Hence we are inclined to maintain conviction of the Appellants but convert their conviction from Section 20b(ii)(C) of the N.D.P.S. into one Section 20(b)(ii)(B) of the N.D.P.S. Act and sentence the Appellants to the period which they have already undergone i.e. about eight years.

16. With the aforesaid modification in the Judgment of conviction and Order of sentence passed against the Appellants, these Appeals are dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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