

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.809 of 2012

Arising Out of PS.Case No. -151 Year- 2010 Thana -Ahiyapur District- MUZAFFARPUR

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Mohan Rai S/O Bilas Rai Resident Of Village- Pachgachiya, P.S.- Gaighat,
District- Muzaffarpur

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr.Madhusudan Kumar, Advocate and
Mr. Anurag Pandey, Advocate

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

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 01-05-2017

The sole appellant is convicted under sections 20(b),(ii),(c) read with section 23 of the N.D.P.S. Act, 1985 vide judgment of conviction, dated 18.7.2012 and sentenced to RI for 12 years and a fine of Rs.1,25,000/- and in default of payment of fine, to further undergo RI for two years vide order of sentence, dated 21.7.2012.

2. The prosecution case, as made out in the written statement of the informant, Baleshwar Prasad, posted as Police Inspector, Minapur Anchal, addressed to Sub-inspector Manoj Kumar, Officer-in-charge, Ahiyapur Police Station, Muzaffarpur on 20.4.2010 at 8 PM, in short, is as follows:-

The informant Inspector Baleshwar Prasad (PW 4) stated



that he was informed by the town Deputy Superintendent of Police (in short 'the D.S.P.) on 20.4.2010 at 8 PM that some persons with Ganja/Narcotic substances on a motorcycle, without number plate, are travelling on Darbhanga Muzaffarpur road. On receipt of the information, he along with raiding party, comprising of Mazahar Ali, driver of the D.S.P., Dilip (not examined) and Rajeshwar (not examined), both constables, proceeded from Bochaha on Muzaffarpur Darbhanga main road. They stopped at a strategic point on Bakri bazaar to keep a vigil on persons travelling on Darbhanga Muzaffarpur road. In the meantime, he saw two persons coming on a motorcycle from Darbhanga side. They had stocked two bundles in between them and one bundle was kept on the rear of the motorcycle. The informant getting suspicious, signalled them to stop. However, they tried to flee, meanwhile the pillion rider lost balance and slipped on the ground. The three bundles which were being carried on the motorcycle, also fell. On query, the apprehended persons disclosed his name as Mohan Rai (the appellant) of village Pachgachiya, P.S. Gaighat, District Muzaffarpur. He confessed that he was carrying a total of 30.5 kilogram (approx) Nepali Ganja in three bundles. One of the bundles weighed as 14.796 Kg, whereas the two bundles weighed 13.714 Kg and 2,400 Kg. Seizure list was prepared on spot and was signed by two independent witnesses, namely, Sujit Mandal



(PW 1) and Rajendra Rai (PW 2). On search of apprehended person, a mobile phone was recovered from his person. He could not produce any paper in support of Ganja, recovered from him.

3. On basis of the detailed report of the informant (PW 4), Ahiyapur Police station Case No. 151 of 2010 was registered on 20.4.2010 at 11.45 PM under sections 22 and 23 of [the Narcotic Drugs and Psychotropic Substances Act, 1985](#) (in short 'the N.D.P.S. Act'). Police in course of investigation, took statement of witnesses and finding the case to be true against the appellant, submitted charge sheet against him under sections 20(b)(ii) read with section 23 of the N.D.P.S. Act. The learned Magistrate took cognizance and committed the case to the court of sessions for trial. The trial court framed charges under the same sections to which the accused pleaded not guilty and claimed to be tried. Case of the appellant, in his statement under section 313 of the Code of Criminal Procedure (in short 'the Cr.P.C.'), is of false implication. However, the defence did not produce any witness or documentary evidence in support of his case.

4. The trial court, on consideration of materials on record, convicted the appellant under section 20(b)(ii) read with section 23 of the N.D.P.S. Act and sentenced him for RI for 12 years with a fine of Rs.1,25,000/-.



5. The prosecution, in support of its case, examined 5 witnesses, namely, Sujit Mandal as PW 1, Rajendra Rai as PW 2, Mazahar Ali as PW 3, Police Inspector Baleshwar Prasad as PW 4 and Sub-inspector Raj Kishor Prasad Singh, as PW 5. P.Ws 1 and 2 are seizure list witnesses who proved their signatures on Ext 1 and 2/1 respectively but denied any recovery from possession of accused and declared hostile. PW 3 is the driver of the Deputy Superintendent of Police and was member of the raiding party. His evidence is relevant only to the extent that the appellant was apprehended with Ganja. PW 4 Baleshwar Prasad, is the Police Inspector of Minapur circle, Muzaffarpur. He is the informant of the case and is the in-charge of the raiding party, which seized the Ganja from the appellant. PW 5 Raj Kishore Prasad Singh is the Investigating Officer (in short 'the I.O.') of the case.

6. Learned counsel appearing for the appellant submits that the prosecution has not acted in conformity with provisions of search and seizure as laid down under sections 50, 55 and 57 of the NDPS Act. Elaborating his submission, learned counsel submits that the police admittedly sent the sample to the Forensic Science Laboratory (in short 'the FSL') for its chemical examination, from only one of three seized packets and not separately from all the three packets. Besides this, the sample which had been sent to the FSL, was neither



sealed nor signed by the competent authority, required under the N.D.P.S. Act. Learned counsel further submits that the seizure was made on 20.4.2010 but its sample was received in the office only on 18.1.2011, i.e. after lapse of nine months.

7. On the other hand, learned Additional Public Prosecutor, appearing for the State, defends the impugned judgment of conviction. He submits that, acting on the information of the D.S.P., PW 4 Baleshwar Prasad, the Police Inspector, along with a raiding party apprehended the appellant, when he was on a motorcycle with three bundles of Ganja, weighing 30.500 kilograms (approx) along with one more person, who managed to flee away.

8. We have heard learned counsel for the parties and perused the materials on record.

9. From the evidence on record, it is evident that the prosecution has not followed the mandatory provisions of the N.D.P.S. Act while conducting raid, seizure and arrest of the accused. As per prosecution case, the informant received prior information from the D.S.P. that some unknown persons are coming towards Muzaffarpur from Darbhanga on a motorcycle. On receipt of information, the informant along with other police personnel proceeded and camped themselves at Bakri bazaar. The N.D.P.S. Act mandates that when the police got information that narcotic



substance is being carried, it is expected that he would inform a Gazetted officer or a Magistrate to ensure that the raid, search and seizure and arrest are being done in a fair manner and as per relevant provisions including section 50 of the N.D.P.S. Act. In the instant case, police did not inform any Gazetted officer or a Magistrate, nor even the DSP, on whose information, PW 4 along with the raiding party, conducted raid and recovered the contraband materials. Learned counsel placed reliance on paragraph 23 of the judgment rendered in case of **Gurjant Singh @ Janta Vs. State of Punjab**, reported in **2014(1) PLJR Supreme Court 489**. Learned counsel submits that while searching the appellant, no option was given to him, whether he would like to be searched in presence of a Gazetted officer. Furthermore, three bundles of Ganja, weighing in total 30.500 kilograms (approx), were seized, but the sample for FSL testing was taken from only one of the three bundles and that too without sealing and signing the sample. Further, the sample of seized Ganja was sent to the FSL for chemical examination, belatedly after a gap of nine months. Besides this, PW 5 (Raj Kishore Prasad Singh), who was the I.O. of the case, in his evidence, has admitted that the sample was sent from a bundle to the FSL which had no bearing of seal or signature.

10. Situated thus, it becomes quite doubtful, whether it was



the seized Ganja which was sent for FSL examination. Furthermore, there is nothing on record to establish that the seized Ganja was weighed and sealed by the informant (PW 4), the In-charge of the raiding party or the I.O. of the case (PW 5) in presence of witnesses. Even the superior police officers were not informed about the search and seizure within 48 hours. Thus, we find that there is substantive breach of other provisions of the N.D.P.S. Act.

11. In the result, the appeal is allowed and the impugned Judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge-9, Muzaffarpur in Sessions case No. 8 of 2012, arising out of Ahiyapur Police station Case No. 151 of 2010, against the appellant, is set aside. The appellant namely Mohan Rai is in custody. Hence he is directed to be released forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Shashi.

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