

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.7 of 2016

Arising Out of PS.Case No. -16 Year- 2012 Thana -BALTHAR District-
WESTCHAMPARAN(BETTIAH)

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Subedar Gaddi Son of Late Doma Gaddi, Resident of Village - Sarakiya Tola, P.S.
- Balthar, District - West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Bimlesh Kumar Pandey, Advocate.

For the Respondent : Mr. Sujeet Kumar Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 29-11-2017

Heard the counsels for the parties.

2. The appellant, Subedar Gaddi has been convicted under Sections 20(b)(ii)C and 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 by judgment dated 02.11.2015 passed by Shri Jitendra Kumar Dubey, learned Additional District and Sessions Judge-V, West Champaran, Bettiah in Trial No. 32 of 2012. By order dated 06.11.2015, the appellant has been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 2 lakhs and in default of payment of fine, to further suffer imprisonment for one year for both the offences viz. under Sections 20(b)(ii)C and 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985. Both the sentences have been directed to run concurrently.



3. The house of the appellant was raided on 29.04.2012 at about 11:20 P.M. and allegedly 105 Kgs. of Charas was found and seized from the northern room of the house. On interrogation, the appellant disclosed that the aforesaid consignment of the narcotics was brought from Nepal and was kept in the house only for the purposes of selling it in various states of the country. The seizure list is said to have been prepared in presence of Sheikh Bundeli and Hasim Mian.

4. The FIR which has been lodged by Ashwini Kumar Tiwari, P.W. 1 further states that the narcotics was seized and the appellant and two others were arrested. Be it noted that the other two persons arrested along with the appellant are non-else but the minor sons of the appellant, who have been tried by the Juvenile Court. A copy of the seizure list was handed over to the accused persons, over which their signatures were also obtained.

5. The trial court, after examining of five witnesses on behalf of the prosecution and four witnesses on behalf of the defence, convicted and sentenced the appellant under Sections 20(b)(ii)C and 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 as stated earlier.

6. P.W. 1 to 5 are members of the raiding team and have supported the prosecution version. They have consistently stated that



on secret information, a raiding team was constituted and the house of the appellant was raided; from where 105 Kgs. of Charas kept in six gunny bags were recovered. Since no valid document could be produced by the appellant or the other accused persons, the narcotics was seized and the appellants and others were arrested. However, what strikes the Court is that there is no statement in the FIR that the narcotic which was seized was sealed in accordance with Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985. There is no reference of keeping the narcotics in safe custody. This Court also is not in a position to find out as to whether proper sampling from the six gunny bags were done. The report of the FSL which is Ext. 4, though reports the sample to be of Charas containing Tetra Hydro Cannabinol (T.H.C.) but there is no reference of the mode in which the parcel was found to be packed at the time of its receipt in the FSL and description of the seal. Ext. 4 clearly makes it obvious that the parcels were not numbered nor any seal was put over it. The column in the FSL report with respect to the aforesaid mode in which the parcel was received and the description of the seal has been left blank. None of the witnesses on behalf of the prosecution have stated about the narcotics being kept in safe custody or in Malkhana.

7. The evidence with respect to the keeping of the narcotics therefore is absolutely blurred and insufficient. In the



absence of proper sampling, even the FSL report would not come to the avail of the prosecution.

8. Section 52A and 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read as hereunder:

[52-A. Disposal of seized narcotic drugs and psychotropic substances. – [(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.]

(2) Where any [narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such [narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the [narcotic drugs, psychotropic substances, controlled substances or conveyances] or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the [narcotic drugs, psychotropic substances, controlled



substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of –

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

55. Police to take charge of articles seized and delivered. – *An officer in charge of a police station shall take charge of and keep in safe custody pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.*

9. From perusal of the records, it appears that the mandatory provisions of both the aforequoted Sections have been



completely ignored.

10. The learned counsel for the appellant has also drawn the attention of this Court to the fact that the seized narcotics has not been produced before the court nor any explanation has been offered for its non-production. Times without number, this Court as well as the Apex Court have held that the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 cannot be ignored and non-compliance with the same would render the prosecution case doubtful.

11. In *Jitendra v. State of M.P.* (2004) 10 SCC, 562, the Supreme Court has held that where there is non-production of contraband goods alleged to have been seized from the accused, the conviction for the offence under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 cannot be sustained. Similarly, in *Ashok v. State of M.P.* (2011) 5 SCC 123, same view has been taken. In the aforesaid case, narcotic drugs or psychotropic substances which were alleged to have been seized from the possession of the accused was not produced before the trial court as a material exhibit and there was no explanation for the same as well. The Supreme Court was of the view that in the absence of its non-production, there would be no evidence to connect the forensic expert report with the drug or the substance that was seized from the



possession of the accused/appellant and in that event, the conviction would not be maintainable.

12. What is further evident is that the two independent witnesses to the seizure also have not been examined before the trial court and for that also, no explanation has been offered. Thus, the only evidence before the trial court was the deposition of the five prosecution witnesses who have testified to the fact that on search from the house of the appellant, 105 Kgs. of Charas was recovered. There is no evidence with respect to taking of the narcotic seized from the house of the appellant to Malkhana and whether the samples were drawn from the same stock of narcotics. In that view of the matter, it would be rather unsafe to accept the FSL report as being the report about the sample which was drawn from the seized stock of narcotics.

13. The provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 are stringent and the sentences prescribed for the offences under the Act are rather harsh. Under such circumstances, any breach of the mandatory provision of law cannot be countenanced.

14. For the aforesaid reasons, this Court is left with no other alternative but to set aside the judgment and order of conviction and acquit the appellant.

15. The appeal is allowed and the appellant is acquitted.



16. The appellant is directed to be released from jail forthwith if not required in any other case.

17. A copy of the judgment be communicated to the Superintendent of the concerned jail for information/record and compliance.

(Ashutosh Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
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