

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.824 of 2016

Arising Out of PS. Case No. -25 Year- 2011 Thana -THAKRAHA District- West Champaran (Bettiah)

- =====
1. GAYA YADAV, SON OF LATE UGAR YADAV RESIDENT OF VILLAGE-NAUTAN GURUWALIYA.
 2. SHARMA YADAV SON OF RAMCHANDRA YADAV RESIDENT OF VILLAGE- BHAGWANPUR.
- BOTH ARE P.S. THAKARAHA, DISTRICT WEST CHAMPARAN.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

Appearance:

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Adv.

For the State : Mr. Abhay Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-08-2017

Appellants Gaya Yadav and Sharma Yadav have been found guilty for an offence punishable under Section 22(c) of the N.D.P.S. Act and each one has been directed to undergo R.I. for ten years as well as to pay fine appertaining to rupees two lacks in default thereof, to under S.I. for one year, additionally with a further direction to set off against the period spent during course of trial under Section 428 of the Cr.P.C. vide judgment of conviction dated 23.08.2016 order of sentence dated 30.08.2016 passed by Additional Sessions Judge, Illrd-cum-Special Judge, N.D.P.S., West Champaran at Bettiah in N.D.P.S. Case No.21 of 2011 arising out of Thakaraha P.S. Case No.25 of 2011.

2. PW.5, Vinay Kumar Singh, Officer-in-charge of Thakaraha P.S. recorded his own fardbeyan on 24.02.2011 at about



08:30 PM at the Darwaja of Gaya Yadav disclosing therein that during course of patrolling while he along with other police personnel so named therein were at Thakaraha Bazar received confidential information that some sort of deal is to be carried out at the place of Gaya Yadav of village Nautan Gurbalia relating to Narcotic whereupon, they proceeded and reached at the destination, where four persons were found sitting around fire place out of them two managed to escape seeing the police while two were apprehended who disclosed their identity as Gaya Yadav as well as Sharma Yadav. Furthermore, it has also been disclosed that two bags, one of red colour and one of blue colour kept at some distance was searched out in presence of two seizure list witnesses, namely, Jag Yadav and Motichand Yadav (not examined) whereupon, forty-eight packets of *charas* each containing 550 gm were seized and for that, seizure list was prepared. Then thereafter, they took control of both the accused, seized article and returned back to the police station whereupon, Thakaraha P.S. Case No.25/2011 was registered. Investigation was entrusted to other police official who, after completing investigation, submitted charge sheet and that happens to be the basis of trial which ultimately concluded adverse to the interest of the appellants as a result of which, instant appeal has been filed.

3. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial. However, neither any DW nor any kind of document has been adduced on behalf of defence.

4. In order to substantiate its case prosecution had examined altogether six PWs, PW.1 Maikan Bagh, PW.2 Ramanand Jha, PW.3 Birendra Yadav, PW.4 Bhutan Pandey, PW.5 Binay Kumar Singh and PW.6 Manoranjan Kumar Choudhary. Side by side had also exhibited Ext.1-Seizure list, Ext.2-Fardbeyan, Ext.3-Signature over formal First Information Report, Ext.4-FSL Report. As stated above neither any DW nor any kind of document has been adduced on behalf of defence.

5. After hearing rival submission as well as going through the lower court record, it is evident that like majority of other N.D.P.S. case, this case also happens to be a glaring example whereunder, the prosecution party discharged their obligation mechanically without considering the fact that non-performance of mandatory provisions at an initial stage of search and seizure virtually axe upon the fate of the prosecution case. Times without number, by different judicial pronouncement, the prosecuting agency has been enlightened over the deficiencies, mistakes, negligence, laches having at their end right from the stage of search and seizure under N.D.P.S. Act which, on account of prescribing stringent punishment as well as presumption against an accused, happens to be fatal to the prosecution case at the other end, also highlighted



procedure to be followed to curb the mistake even then, the reason best known to the prosecution the aforesaid sermon gone unheeded and on account thereof, in majority of the case it cost dear to the prosecution.

6. Now coming to the present case, it is evident that neither both the seizure list witnesses have been examined nor the Investigating Officer. The non-examination of Investigating Officer apart from others is found example to the prosecution case in the background of the fact that from the lower court record it is evident that charge sheet was submitted on 24.09.2011 against these two appellants keeping investigation pending against others without having any kind of sincere effort at the end of the Investigating Officer to have sample from the seized articles in presence of Special Judge and got it transmitted for chemical examination to the FSL, during midst thereof, charge was framed on 25.11.2011, witnesses began to be examined and then, though no requisition is available on the record, but Ext.4, the FSL report suggest that the sample was transmitted on 22.08.2012 which was received on 25.08.2012. That means to say nearly one year and six months after the alleged recovery aforesaid exercise was done. Had there been examination of the Investigating Officer, the defence would have in a position to cross-examine on the issue, more particularly lapses having at his end and the reason for not taking the aforesaid activity at an earliest.



7. In likewise manner, as is evident from the evidence of PW.5, informant that he after taking control over seized article as well as accused and getting his self-statement scribed at the P.O. he came to P.S. where formal FIR was drawn, case was registered and investigation was entrusted to Upendra Kumar Singh, ASI. He had not spoken with regard to preparation of sample, sealing of seized article, deposit of seized article in Malkhana with proper entry under Malkhana register or, handing over the same to the Investigating Officer in the background of the fact that PW.1 to PW.5 are silent over intermediary custody of the seized article. Had there been examination of the Investigating Officer, the defence would have an opportunity to cross-examine regarding preparation of sample, intermediary custody, transmission of sample for chemical examination to FSL and by such activity, the right of the accused has been prejudiced.

8. Apart from this, it is evident from the evidence of PW.1 to PW.5 that they have not cared to inform their superior officials in terms of Section 42(2) of the NDPS Act or under Section 57 thereof. These activities happen to be an obligation on the part of the prosecution which, the prosecution has to follow. Though its impact, on account of non-compliance above has not been considered to be fatal to the prosecution case but when it is taken together with the other eventualities visualizing from the prosecution case then, in



that event, it happens to be an additional ground to discredit the prosecution version.

9. Now coming to the evidence of PW.6. It is evident that he happens to be part Investigating Officer though had not conducted investigation in any manner save and except filing of charge sheet. He had come to depose that as per direction of the Officer-in-charge he is producing forty-seven packets of charas relating to Thakaraha P.S. Case No.25/2011. He on his own had deposed that he has produced forty-seven packets while one packet was sent to FSL for its examination that means to say 550 gm of seized article was sent to FSL for chemical analysis however is not at all found corroborated by Ext.4 as, the same lacks receipt of real quantity of the article save and except that one tin box was received at their end. Furthermore, he failed to exhibit the relevant order having issued by the Officer-in-charge of Thakaraha police station and in likewise manner, regarding the details that means to say serial number of Malkhana register, date on which those seized articles were kept in Malkhana and the date on which it was withdrawn therefrom in order to produce before the court. After having close scrutiny of the evidences of the respective PWs, it is evident that though they are consistent over their activity, arrest of the appellants from their place but, so far compliance of mandatory provisions are concerned, they utterly failed to substantiate the same.



10. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court did not find favour whereupon, is set aside. Appeal is allowed. Both the appellants are under custody hence are directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.08.2017
Transmission Date	24.08.2017

