

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.599 of 2015

Arising Out of PS.Case No. -295 Year- 2012 Thana -RAMNAGAR District-
WESTCHAMPARAN(BETTIAH)

=====

1. Hiralal Yadav @ Sikandar Yadav Son of Ramji Yadav R/o Village Pakari,
Jamuniya, P.S. Bathuwariya, District West Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (SJ) No. 600 of 2015

Arising Out of PS.Case No. -295 Year- 2012 Thana -RAMNAGAR District-
WESTCHAMPARAN(BETTIAH)

=====

1. Tulsi Sah Son of Sri Badri Sah R/o Khalwa Tola, P.S. Nawalpur, District West
Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

(In CR. APP (SJ) No.599 of 2015)

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

For the Respondent/s : Mr. Z. Hoda, A.P.P.

(In CR. APP (SJ) No.600 of 2015)

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

For the Respondent/s : Mr. Z. Hoda, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 23-05-2017

Criminal Appeal No. 599 of 2015 wherein Hiralal Yadav

@ Sikandar Yadav is the appellant and Criminal Appeal No. 600 of

2015 wherein Tulsi Sah is the appellant commonly originate against

the judgment of conviction dated 12.08.2015 and order of sentence



dated 13.08.2015 passed by Sessions Judge-cum-Special Judge, N.D.P.S., West Champaran at Bettiah in N.D.P.S. Case No. 74 of 2012 arising out of Ramnagar P.S. Case No. 295 of 2012, Trial No. 68 of 2012 whereby and whereunder both the appellants have been found guilty for the offences punishable under Section 20(b)(ii)(c) as well as 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 fine of Rs. one Lakh and in default thereof to undergo imprisonment for one year, additionally, under each head independently, separately with a further direction to run the sentences concurrently on account thereof, there has been conjoint hearing and are being disposed of by a common judgment.

2. P.W.3 Krishna Nand Jha, Officer-in-charge of Ramnagar Police Station while was on patrolling along with police personnels as per direction given by the Superintendent of Police on the eve of “Bandh” called by a political party on 22.08.2012, got confidential information regarding storage, transportation of Ganja in huge quantity after being smuggled from Nepal through Mashan river in between Yogia-Inerva village whereupon, raid was conducted and during course thereof, as has been alleged two persons were apprehended at the spot who are none else than the appellants as well as 14 bags of Ganja weighing 205 Kgs. were seized for that, seizure list was prepared in presence of seizure list witnesses Md. Ashraf as



well as Musahir Ram and for that, after recording self statement, instant case bearing Ramnagar P.S. Case No. 295 of 2012 was registered.

3. It is further evident that after registration of the case, investigation was entrusted to P.W.4, Bhagwan Pandey who proceeded therewith, recorded statement of the witnesses, inspected place of occurrence, got sampling in presence of Magistrate, examined by the F.S.L. and then, found the case true whereupon submitted chargesheet against the accused, which ultimately paves the way for trial which concluded in a manner, the subject matter of instant appeal.

4. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Code of Criminal Procedure, is that of complete denial. However, neither any D.W. nor a chit of paper has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined 7 P.Ws. out of whom P.W.1 Bachan Jha, P.W.2 Arun Kumar, P.W.3 Krishna Nand Jha, P.W.4 Bhagwan Pandey, P.W.5 Nawal Rai, P.W.6 Md. Ashfaque, P.W.7 Ramji Prasad Lal side by side had also exhibited. Exhibit 1-seizure list, Exhibit 2-self statement of the informant, Exhibit 2/1-endorsement over self statement of the



informant, Exhibit 3- signature of O.C. over formal F.I.R., Exhibit 4- requisition have been made by the I.O. for sampling before the Special Judge, N.D.P.S., Exhibit 5- F.S.L. report. As referred above, nothing has been adduced on behalf of the defence.

6. Now, coming to scrutinize the evidence on record, it looks better to proceed with the evidence of the informant, P.W.3. During his examination-in-chief he had deposed that on the alleged date while he was on patrolling with other police personnel, got confidential information with regard to storage of Narcotic substance in between Yogia Inerwa village at the bank of Mashan river on account thereof, he reached at the spot, conducted raid and during course thereof, others managed to escape while both the appellants were apprehended. Furthermore, on search 14 bags of Ganja were seized. He had further stated that he had informed the C.O. who did not come and instead of himself sent Edburd Lakre, C.I. in whose presence whole exercise was done. Then thereafter, it has been deposed at his end that seizure list was prepared and a copy thereof, has been served upon the apprehended accused, which he had exhibited. He had recorded his self-statement. Then thereafter, he after having custody of the articles as well as accused returned back to the Police Station where formal F.I.R. was drawn up and on the basis thereof registration of the case was done. During cross-examination, it



is evident that he was not at all cross-examined on the score of recovery of the Ganja and in likewise manner, arrest of the appellants at the spot. Furthermore, from paragraph 16, it is evident that on being questioned he has answered that after coming to Police Station formal F.I.R. was drawn up simultaneously, seized articles were kept in Malkhana.

7. P.W. 4 is the I.O. He had deposed that on 22.08.2012 he was one of the police official posted at Ramnagar Police Station. After registration of the case, he was entrusted with the investigation whereunder he recorded statement of the witnesses, visited the place of occurrence which he detailed, after getting an order of the court transmitted the sample to F.S.L. for chemical examination and then, finding the case true, filed chargesheet. During cross-examination at paragraph 8, he had admitted that he had not recorded in the case diary quantum of sample taken from each of the bag. He had further admitted that there happens to be specific disclosure in the case diary with regard to preparation of sample in two plastic jars. He had further admitted that he had not received F.S.L. report before submission of the chargesheet.

8. P.W.6 is one of the seizure list witness namely Md. Ashfaque. During course of his examination, prosecution, best known had not examined over the factual aspect save and except his signature



over the seizure list.

9. The remaining witnesses support the case of the prosecution in a way that whatever been deposed at the end of the P.W.3, the informant save and except, the status of P.W.2 as well as P.W.7 who had not identified the accused in dock and on account thereof, there happens to be absence of substantial evidence on that very score at their end.

10. From perusal of the record, it is evident that prosecution under N.D.P.S. Act is meant for acquittal only on account of severe lapses at the end of prosecution agency in following the mandatory provision of law. Either the agencies are so in different that they are not at all sincere to perceive the niceties of the Act whereunder legal obligations have been put upon shoulder of the investigating authority which, on account of non-compliance would certainly cast upon prosecution case irrespective of nature of the evidence and in likewise manner, on account of lacking of knowledge relating to proper way of investigation.

11. Now coming to the present case, it is evident that recovery happens to be from open space. Before conduction of raid, the informant got confidential information regarding storage/transportation of the Ganja by the smugglers on his own and on account thereof, it was an exercise in terms of Section 42 of the



Act. That being so, either the informant, P.W.3 or the I.O. P.W.4, who was entrusted with the investigation on the date of occurrence itself would have complied with the mandatory provision so prescribed under Sub section (2) of Section 42 of the Act by way of informing the just superior officials regarding recovery as well as apprehension of the accused which was to be completed within 72 hours. Another provision asking for same activity has also been prescribed under Section 57 of the Act whereunder the officials have to report within 48 hours to the just superior officer. True it is, that production of the accused was made on 23.08.2012 before the learned Sessions Judge but, the Sessions Judge/Special Judge is not the superior officer in terms of Section 42(2) as well as Section 57 of the N.D.P.S. Act. These provisions have got a purpose to prevent miscarriage of justice to protect interest of the accused. So from the evidence of concerned police officials, it is apparent that the aforesaid exercise have not been taken up as, prosecution is completely silent and that has got a bearing in the background of the fact that from the evidence of P.W.4, I.O. it is evident that he was entrusted with the investigation on the same day but he had not deposed that he took possession of the seized article nor had deposed that seized articles were kept in Thana Malkhana, though P.W.3, paragraph 16 as indicated above, had spoken like so. That means to say, seized article, if any, had not been entrusted to the



I.O. and this fact is found duly supported with the Exhibit 4, which happens to be requisition made by the I.O. on 21.01.2013, that means to say after lapse of five months from the alleged recovery. Apart from this, prosecution is also silent over place where the alleged seized articles were kept during the aforesaid intervening period.

12. Furthermore, from Exhibit-4, it is evident that only the prayer portion has been made an exhibit which did not specify that the articles were in sealed condition nor P.W.3 as well as P.W.4 during their evidence have deposed on that very score in terms of Section 55 of the Act. Even considering Exhibit-4, the process of sampling was completed on 22.01.2013 and from Exhibit-5 it is evident that the sample was carried by P.W.4, Bhagwan Pandey himself to F.S.L. and the same was received at the office of the F.S.L., Patna, Bihar on 04.12.2013. Again, there happens to be no disclosure at the end of the P.W.4 where, the samples were kept during the aforesaid period. Furthermore, as per paragraph 8 of P.W.4 the sample was kept in two plastic jars while Exhibit 5-F.S.L. report discloses presence of one tin container. That means to say, there happens to be inconsistency on that very score, which, if taken into consideration with the oral evidence, it is apparent that the same jar was not produced before F.S.L. wherein sample was prepared, and so creates doubt over genuineness of the sample which, the F.S.L. had tested.



13. Apart from this, the non-production of the seized articles in court as material exhibit has also cast doubt over genuineness of the prosecution version in the background of inconsistency as indicated hereinabove. The prosecution did not explain regarding non-production of seized material nor there happens to be evidence on the score that seized articles were destroyed in terms of Section 55A of the Act, whereunder the inventory prepared by the Magistrate as well as sample would have been exhibited. Furthermore, the mode of sealing, sampling, has been prescribed by the Narcotic Control Bureau under different order no. 1/88 as well as 1/89, which is found relevant for the present purpose in the background of inconsistency, deficiency at the end of the prosecution, keeping the matter pending for five months, in asking for permission to allow preparation of sample to be sent to F.S.L. and in likewise manner, keeping the same under the personal capacity for approximately fortnight even thereafter without any explanation having difference of container while the sample was prepared and transmitted to F.S.L.

14. Regard being had to the facts and circumstances of the case as well as giving anxious, minute observation of the materials available on the record in consonance with close scrutiny of the evidence as well as exhibits coupled with the fact that prosecution had



failed to comply with mandatory provisions of law causing prejudice to the appellants and further, non-production of the material exhibit in court which had been found major deficiency in the prosecution case as has been held by the Hon’ble Apex Court in case of *Vijay Jain Versus State of Madhya Pradesh and Nilesh Suryakant Shah Versus State of Madhya Pradesh* reported in (2013) 14 SCC 527, it is observed and held that the prosecution miserably failed to substantiate its case beyond all reasonable doubt.

15. Consequent thereupon, the judgment of conviction and order of sentence recorded by the learned lower court against both the appellants are set aside. Both the appeals are 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)

Vats/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.05.2017
Transmission Date	25.05.2017

