

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.544 of 2014

Arising Out of PS. Case No.-9 Year-2008 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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Munakka Devi @ Bachchi Devi @ Bachchi Tiwary W/o Balram Tiwari,
Resident of Village - Bheempur, P.S. - Deoriya, District - Deoriya (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Bansh Dubey
For the Respondent/s : Mr. Bipin Kumar(APP)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date 31 -01-2018

The appellant stands convicted of the offence punishable under sections (20(b), (ii)(C), 23 (c), 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the Act'), by the court of learned 6th Additional Sessions Judge, Muzaffarpur in T.R. No. 01 of 2012. Consequent upon her conviction, she has been sentenced to undergo rigorous imprisonment for a term of 10 years with a fine of Rs. 1,00,000-/(one lakh) for the offence punishable under section 20(b) (ii) (C); 10 years rigorous imprisonment with a fine of Rs. 1,00,000 (one lakh) for the offence under section 23(c) and rigorous imprisonment for 10 years and a fine of Rs. 1,00,000/- (one



lakh) for the offence punishable under section 29 of the Act. Though she was charged for commission of offence under Section 25 of the Act, she has been acquitted of the charge. All the sentences have been ordered to run concurrently. In default of payment of fine, the appellant has been directed to undergo rigorous imprisonment for a further period of 03 years.

2. The appellant in the present appeal is aggrieved by the said judgment of conviction and the order of sentence passed by the trial court.

3. The case of the prosecution, in brief, is that the Directorate of Revenue Intelligence (D.R.I.) Lucknow, Zonal Unit on a tip off, regarding smuggling of narcotic drugs and psychotropic substance through Land Custom Station (in short L.C.S.) Raxaul by three persons in a Maruti Esteem car bearing registration no. MP09HB-0777 on 26.09.2008, after informing the D.R.I. officials at Muzaffarpur and Patna, formed a team for keeping a vigil on movement of the said vehicle. The said car was seen entering into Nepal border through L.C.S. Raxaul on 26.09.2008 and returning back on 29.09.2008 through the same route into the territory of India. Signal given by the officials of the D.R.I. to stop the vehicle



was avoided by the driver and after a hot chase the vehicle was intercepted at a place known as Laxmipur. There were two occupants of the vehicle who disclosed their identity. The appellant was one of them. They disclosed to the D.R.I. officials that *Charas* was secreted in a specially designed cavity on the back side of rear seat of the car. The space designed for keeping the said *Charas* was found to be strongly built which could not be easily accessed. The vehicle was therefore brought to the D.R.I. office, Muzaffarpur along with two independent witnesses in whose presence the vehicle was intercepted.

4. In the premises of D.R.I. office Muzaffarpur upon removal of the rear seat of the car in the presence of the members of the team of D.R.I. and the witnesses, 119 bags of *Charas* weighing 95 kg. was recovered which was seized following the procedure prescribed. Three representative samples of 25 gm each were drawn. The accused persons disclosed the name of one Bhuneshwar Yadav @ Guddu Yadav for whom they were carrying the seized articles.

5. They disclosed to the D.R.I. officials that under the direction of the said Bhuneshwar Yadav, they had boarded the said vehicle from Deoria and had gone with him to Nepal



through L.C.S. Raxaul. On 27.09.2008 when they had reached Kathmandu, the said Bhuneshwar Yadav had got concealed the seized *Charas* in specially made cavity of the car in presence of the co-accused Sajid Khan.

6. Upon verification of the driving licence of Sajid Khan which he had produced before the D.R.I. officials issued by the Regional Transport Office, Deoria, it was found that the said driving licence number appearing on the driving licence of Sajid Khan was, in fact, issued in the name of some other person and no driving licence was issued in the name of Sajid Khan. The registering authority, i.e., R.T.O., Indore also informed that the Maruti Esteem car bearing registration no. MP09HB-0777 had been registered in the name of Bhuneshwar Yadav.

7. The complaint in respect of the occurrence was filed on 24.03.2009 whereafter cognizance was taken on 01.04.2009. The charges against the accused persons were framed on 01.04.2010 and because of certain procedural discrepancy, the charges were again framed on 28.06.2012. Since the said accused persons pleaded not guilty, they were put on trial. The trial of other co-accused Bhuneshwar Yadav was separated.



8. At the trial, the prosecution examined altogether 07 prosecution witnesses and they proved the seizure list as Ext.1, Panchnama as Ext.2, voluntary statement of the accused as Ext.3 to 3/1, interrogatory statement of the accused (Ext.4 to 4/1), the letter forwarding the sample to Chemical Examiner (Custom House) Kolkata as Ext.5, report of Chemical Examiner, (Custom House) Kolkata as Ext. 6 and the report of the Central Revenue Control Laboratory, New Delhi as Ext.6/1. The inventory of the *Charas* and inventory of the seized car were proved as Ext. 7 and 7/1 whereas the entry in the Godown register of the *Charas* was proved as Ext. 8. The sample of the *Charas* was proved as Ext.I whereas representative sample of seized *Charas* was proved as Ext.II. In addition, letter dated 06.10.2008 of the Senior Intelligence Officer, D.R.I., S.R.U., Gorakhpur along with various Panchnamas signed by him and the Panches, the statement of one Veena Devi, the daughter-in-law of the appellant, the statement of Amarjeet Yadav. Other documents received by the complainant in course of follow-up action were also available on record at the trial which were admissible in evidence with presumption in their favour under section 66 of the Act.



9. The prosecution witnesses, barring minor contradiction, were consistent in their depositions at the trial. They deposed that the D.R.I. Officials had searched the car in presence of the witnesses whereafter the said 95 kg of *Charas* was recovered from the cavity on removal of the rear seat. They explained the reason why the car had to be brought to the D.R.I. Office, Muzaffarpur premises since the cavity was strongly welded and could not be broken open. It transpires, however, that there have been contradictions in deposition of the witnesses in respect of the manner in which the contraband was seized and in respect of the colour of the car. The learned trial court found those contradictions to be insignificant for disbelieving the deposition of the witnesses on the question of recovery of the contraband from beneath the rear seat of the car which was occupied by two persons including the appellant. After having noticed that the prosecution was able to discharge its burden of proving, recovery of the said contraband articles from the car occupied by the appellant and other co-accused, applying presumption under section 54 of the Act and taking other corroborative materials on record, held the appellant and other co-accused guilty of the offence punishable under sections 20 (b) (ii) (c)



23 (c) and 29 of the N.D.P.S. Act. The other co-accused Sajid Khan was held guilty of the offence punishable under section 25 of the Act also whereas the appellant was acquitted of the offence punishable under section 25 of the Act. Consequent upon the conviction, the sentence of imprisonment and fine have been awarded as has been noticed above.

10. I have heard Mr. Raj Bansh Dubey, learned counsel appearing on behalf of the appellant and Mr. Bipin Kumar, learned APP and have gone through the lower court records carefully.

11. Mr. Dubey, learned counsel for the appellant has submitted, assailing the impugned order that the conviction recorded by the trial court is unsustainable in view of non-compliance of the mandatory requirement under section 50 of the Act inasmuch as the search was not carried out either in presence of a gazetted officer or a magistrate. He has further submitted that non-examination of some of the crucial witnesses including the seizure list witness was fatal to the case of the prosecution which the learned trial court failed to appreciate. He has thirdly argued that major contradictions in deposition of the witnesses have been ignored by the trial court and according to him, appreciation



of evidence by the court below has been done in a perfunctory manner. He has lastly submitted that the contraband cannot be said to have been found in conscious possession of the appellant since it was recovered from beneath the rear seat of the vehicle and the appellant had no knowledge about the same. So far as compliance of section 50 of the Act is concerned, in my view, the same has no application in the facts and circumstances of the case because from the person of the appellant nothing was recovered rather the same was recovered from the vehicle occupied by the appellant. Learned counsel appearing on behalf of the appellant has relied on a Supreme Court decision in case of **Gurbax Singh vs. State of Haryana reported in AIR 2001 SC 1002**. The said judgment is, as a matter of fact, direct answer to what has been submitted on behalf of the appellant. The Supreme Court, upon placing reliance on the previous decisions in case of **Baldeo Singh reported in (1999) 6 SCC 172 & Kalema Tumba vs. State of Maharashtra reported in (1999) 8 SCC 257**, in most clear terms, held that when an empowered officer or duly Authorized Officer is about to “search a person,” it is imperative for him to inform the person concerned of his right under sub-section



(1) of section 50 of being taken to the nearest Gazetted Officer or the nearest magistrate for making the search. In my view, since the recovery was made from the vehicle and not from the person of the appellant, there was no question of following the requirement of the provision under section 50 of the Act.

12. Upon perusal of the evidence on record, it transpired that there are certain discrepancies in the evidence of the witnesses on the point of their arrival at Raxaul and their return to the D.R.I. Office, Muzaffarpur. A plea has been taken that since the manner in which the seized contraband was seized could not be satisfactorily explained by the prosecution witnesses, the prosecution must fail. These contradictions, in my view, are not so material as would have adversely affected the case of the prosecution. From the evidence on record, the prosecution could successfully establish that recovery of contraband was made from the car occupied by the appellant and another accused. The prosecution was thus able to discharge its burden giving rise to presumption of commission of offence because of possession of illicit articles, within the meaning of section 54 of the Act. There is no evidence to show that the appellant



could account for the possession of the articles so seized satisfactorily.

13. The finding of conviction recorded by the learned trial court, in my view, does not require interference.

14. This appeal is devoid of merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

HR/-

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