

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.776 of 2016

Arising Out of PS.Case No. -26 Year- 2014 Thana -WEST CHAMPARAN GRP CASE District-
WESTCHAMPARAN(BETTIAH)

=====

1. Ramjee Prasad Son of Yadav Lal Prasad R/o Village Bhiswa, P.S. Langari,
District Parsa,(Nepal).

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Sharda Nand Mishra, Adv.
Mr. Dhananjay Kumar Gupta, Adv.
Mr. Deepak Kumar, Adv.
Mr. Rajiv Ranjan, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 12-04-2018

Heard the learned counsel for the appellant and the State.

2. The appellant/Ramjee Prasad has been convicted under Sections 20(b)(II)(C), 22(C) and 23(C) of the N.D.P.S. Act, 1985 by the judgment dated 03.09.2016 passed by the Additional District & Sessions Judge VI, Bettiah, West Champaran in Case No. 04/2015, arising out of Rail Narkatiaganj P.S. Case No. 26/2014 and by the order dated 08.09.2016, he has been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine, to further suffer R.I. for one year for each of the offences for which he has been convicted; the sentences, however, having been ordered to run concurrently.



3. From the possession of the appellant/Ramjee Prasad, 15 and ½ kgs of *Charas* was recovered.

4. The case of the prosecution is based on the written report of Jagjeevan Ram Sharma (P.W. 3), who has alleged that on 03.08.2014, he had received information that two smugglers are carrying narcotics on a motorcycle which they have brought from Nepal and would come to Narkatiaganj via Lauria. This information was given to the railway police, which was also directed to remain alert. A team was constituted under the leadership of Sanjay Kumar, Deputy Commandant, who has been examined as P.W. 7. The team reached Narkatiaganj Railway Station. In the meanwhile, two persons were seen moving on a motorcycle. When the motorcycle was signalled to be stopped, the pillion rider got down from the vehicle and started running away. He was carrying a black bag in his hand. The aforesaid person was arrested who disclosed his name as that of the appellant. On being questioned about the contents of the bag, which he was carrying, he disclosed that it was *Charas*. The *Charas* was found to be kept in 31 plastic packets inside the bag. From the possession of the driver of the motorcycle, nothing was recovered except money and mobile telephone. The appellant is said to have disclosed before the police party that the aforesaid narcotics was purchased in Nepal and was about to be sold at Gorakhpur. The aforesaid consignment was purchased by the appellant for a consideration amount of Rs. 15,000/-. A seizure-list was prepared.



In the meantime, the Officer In-charge of Railway Police Station, Narkatiaganj also arrived.

5. On the basis of the aforesaid written report, a case vide Rail Narkatiaganj P.S. Case No. 26/2014 dated 03.08.2014 was instituted for investigation of the offences under Sections 20(b)(ii)(c), 21(C), 22/27(A) of the NDPS Act.

6. The police, after investigation, submitted charge-sheet; whereupon the appellant and another person, viz. Lalu Singh were put on trial. Lalu Singh, for paucity of evidence against him, has been acquitted of all the charges.

7. The trial court, after examining 7 witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

8. Mr. Shardanand Mishra, learned advocate appearing for the appellant has submitted that no independent person has been examined at the trial to support the factum of search and seizure from the possession of the appellant and that the mandatory provisions of the NDPS Act regarding search and seizure have not been complied with. It has further been submitted that the sampling of the narcotics was not done in accordance with the requirement of law in that regard and without sealing the aforesaid narcotics, the same was kept in the police station and in the Malkhana. In that view of the matter, it has been argued, the basic evidence with respect to the search and seizure is lacking.



9. Seema Kumari (P.W. 1), who was one of the members of the team has, though, supported the prosecution version but has stated that the appellant was made to sign on the seizure-list but his signature was not obtained on the packet of the narcotics.

10. Nirmesh Kumar Mishra (P.W. 2), who along with P.W. 1 had caught hold of the appellant, has stated that only the person who ran away after alighting from the motorcycle was arrested by him and P.W. 1. There were 31 packets of *Charas* in the bag which was being carried by the appellant. The assessment of the same being *Charas* was only on the basis of the disclosure of the appellant and no further enquiry was made by any field testing kit.

11. The deposition of the aforesaid two witnesses do not therefore, establish that whatever packet was produced before the court was the one which was seized at the time of arrest of the appellant.

12. The informant (P.W.3) has also admitted in his cross-examination that the seized narcotics was stated to be *Charas* only on the basis of the disclosure made by the appellant. He has categorically admitted that the seized narcotics was not sealed and no case number was also written over the bag. Though, he has stated that the seized item was weighed at the place of search but has also, in the same breath, stated that the packets which were found from the bag of the petitioner were not weighed separately.

13. In this connection, it would be relevant to refer to the



deposition of Ramashish Paswan (P.W. 4), who is the Investigating Officer in this case. He has stated that he took the statement of the members of the raiding team and also recorded the confession of the appellant. He had visited the place of occurrence on the next day of his assuming charge of the investigation. He had seen the seized item and had found that the same was not sealed. The same was sent to the Malkhana but he never made any entry about it in the case diary or in the register of the Malkhana.

14. The sample was stated to be drawn and sealed on 28.10.2014, i.e. after about two months of the seizure and from 28.10.2014 till 30.10.2014, the sealed sample was kept in the police station. It was sent the Forensic Science Laboratory only on 31st of October, 2014 through a constable. The same was received in the FSL on the same day, i.e. on 31.10.2014. He has not stated anything to confirm whether samples were drawn from all the packets or only from one packet.

15. Thus, from the deposition of the aforesaid prosecution witness, it becomes very clear that whatever was seized was never sealed and in an unsealed condition, the aforesaid packets were kept in the Malkhana. There is no certainty that the consignment had not been tampered with.

16. This Court also does not have any material to rely upon that the packet was kept in the Malkhana as there is no entry



regarding the same in the case diary or in the register of the Malkhana.

17. In that view of the matter, it cannot be accepted with certainty that the seized packets were kept in Malkhana or at a safe place which could not have been tampered or interfered with.

18. It further appears to be rather surprising that when the samples were drawn after two months, why was it kept in the police station, without any purpose, for two days and was dispatched to the FSL only on 31.10.2014. With this time lapse in keeping of the sealed sample in the police station premises, it loses all its significance and there is no connecting link between what was seized, which sample was drawn from which stock. In such a situation, even if the FSL report confirmed the fact that the sample corresponded to *Charas*, the same cannot be relied upon for the purposes of convicting and sentencing the appellant, since it has not been proved beyond reasonable doubts that whatever was seized from the possession of the appellant was kept in safe custody, it would be difficult to presume that the sample drawn from that stock would be the same and that whatever was produced before the court was also the same consignment which is said to have been seized.

19. In the absence of sealing of the seized articles and there being no evidence of it being kept in the Malkhana, it is difficult to sustain the conviction and sentence of the appellant on that score alone.

20. The appellant is sought to be prosecuted for the



offence of keeping in his possession narcotic, which is banned under law. If the primary evidence regarding the seizure is lacking, no conviction can be recorded. The provisions of NDPS Act are very stringent. It therefore becomes very imperative that provisions contained therein are followed to the fullest. The law does not brook of any departure from the same.

21. For the reasons aforesaid, the judgment and order of conviction of the appellant is set aside and the appeal is allowed.

22. The appellant is in custody. He is directed to be released forthwith from jail, if not wanted in any other case.

23. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.04.2018
Transmission Date	16.04.2018

