

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.491 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Bhola Gope, son of Late Fakirchand Gop, resident of Bhanwar Pokhar Birala Mandir Road, P.S. Pirbahore, District- Patna.
 2. Md. Aftab, son of Late Abdul Rahim, resident of Chain Singh Patti, P.S.- Supaul, District- Saupaul.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 21 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Sujit Gope, son of Late Jagdish Gope, resident of Bhanwar Pokhar Bagicha, P.S.- Pirbahore, District- Patna.
 2. Md. Shamim, son of Akhtar, resident of Bhanwar Pokhar, near Nim Tree, P.S.- Pirbahore, District- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.491 of 2003)

For the Appellant/s : Mr. Mahesh Prasad No.II, Advocate

For the State : Mr. Binod Bihari Singh, A.P.P.

(In CR. APP (SJ) No.21 of 2004)

For the Appellant/s : Mr. Mahesh Prasad No.II, Advocate

For the State : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 14-08-2018

Cr. Appeal No.491 of 2003 and Cr. Appeal No.21 of 2004



arise out of common judgment and order dated 14.8.2003 passed by Sri Bharat Prasad Yadav, Additional District and Sessions Judge-3rd, Patna in Sessions Trial (Special Case) No.184 of 1993 by which he has convicted the appellants of both the cases under Section 20(b)(i) read with Section 8(c) of N.D.P.S. Act and sentenced them to undergo R.I. for two years. Since both cases arise out of the same judgment and order, they have been taken up for disposal by a common judgment.

2. Prosecution case in short is that P.W.1, Rameshwar Murmu, S.I. of Pirbahore Police Station was on patrolling duty along with other police officials and they received a secret information that near Birla Mandir Road in the shop of Bhola Gope and Sujit Gope, Ganja, Afim and Smack are being sold and on this information, informant along with other police officials reached there and in presence of two independent witnesses namely, Shambhu Rai and Vishnu Sah the shop of Bhola Gope was searched where appellant Md. Aftab was found who claimed to be servant of Bhola Gope and on being searched from the wooden box 40 purya containing two grams and 17 purya containing one gram of ganja were recovered and similarly from the shop of Sujit Gope one person was found who disclosed his name as Md. Shamim who was sitting there. On search 5 purya containing 10 grams of ganja, 5 purya containing 5 grams of ganja, 30 purya containing 2 gram ganja and 109 purya containing



one gram ganja were recovered and seized.

3. On the basis of above statement of the informant, Pirbahore P.S. Case No.406 of 1991 under Section 47 Excise Act and 20(b)(2) of the N.D.P.S. Act was registered and after completion of investigation, charge sheet was submitted and cognizance of the offence was taken and the case has been transferred to the court of Sessions for trial and disposal which has ultimately been transferred to the court of Sri Bharat Prasad Yadav, Additional Sessions Judge-3rd, Patna.

4. Charges were framed under Section 47 A of Excise Act and 8(c) read with Section 20(c)(i) of the N.D.P.S. Act against all the appellants.

5. In support of its case, prosecution examined P.W.1, Rameshwar Murmu, who was the S.I. and seized the articles. Apart from the above evidence, following documents have been brought on record, as Ext.1, seizure list of shop of Bhola Gope, Ext.1/1, seizure list of shop of Sujit Gope, Ext. 2, self statement of the informant, Ext.3, formal F.I.R. and Ext.4, endorsement regarding registration of the case. Neither oral nor any documentary evidence has been adduced on behalf of the defence and their plea was of false implication and of innocence. Learned trial court on conclusion of trial has convicted the appellants under Section 20(b)(i) read with Section 8(c) of the N.D.P.S. Act and acquitted the appellants from the



charge under Section 47 A of the Excise Act.

6. Being aggrieved by the aforesaid judgment and order, the present appeals have been preferred on the ground that neither the independent witnesses were examined nor seized articles were produced in the court, furthermore, the seized articles had not been sent to Forensic Science Laboratory for examination and there is no finding that seized articles were ganja and apart from that this case except P.W.1, no witness has been examined to prove the charge. It is also submitted by learned counsel for the appellants that in this case there is no compliance of Section 52A and 57 of the N.D.P.S. Act as no sample was prepared and no information was given to the higher authority about the seizure of the articles and in spite of the aforesaid consistency, the learned trial court has convicted the appellants under Section 20(b)(i) read with Section 8(c) of the Act which does not appear to be sustainable in the eye of law.

7. On the other hand, learned counsel for the State supported the judgment of the trial court but he has also admitted that in this case, material exhibits had not been sent to FSL nor there is any report that seized articles is ganja nor material exhibits were produced in the court.

8. Having heard both sides, in view of the background of submissions on examination of the evidence, it appears that P.W.1 is the sole witness and no independent witness was examined though



seizure was made on 12.12.1991 at 8.00 P.M. along with other police officials on information that Bhola Gope and Sujit Gope were selling the ganja, afim and smacks. On search, the shop of Bhola Gope and Sujit Gope in presence of independent witnesses Shambhu Rai and Bishnu Rai, and in their presence the search was made and from the small boxes, several puryas were recovered containing ganja and seizure lists were prepared in which the signatures of the independent witnesses namely Shambhu Rai and Bishnu Sah were taken and signature of Md. Aftab was also taken. It further appears that thereafter they searched the shop of Sujit Gope and there Md. Shamim sitting and from his shop also, small quantity of ganja were found and seizure list was prepared and the signature of the independent witness was taken on the same. It further appears that on the basis of self statement of the informant, the case has been lodged that thereafter the investigation was handed over to one A.S.I., who recorded his statement. This witness has been cross examined and from his cross examination, it appears that he had seized articles at 8.00 P.M. at the shop and he had not called for respectable persons of the locality at the time of search and search was made in presence of Shambhu Rai and Bishnu Sah. It further appears that he has kept the purya in a bag and he has not taken the signature of the witnesses. A suggestion has been given that they had taken tea at the shop of the appellants and when demanded money, they have been falsely implicated in this



case, which has been denied.

9. Apart from the evidence of P.W.1, no other witness has been examined. Neither the I.O. nor the independent witness whose signatures had been taken on the seizure list, have been examined. It further appears from perusal of the record that no sample was prepared from them as per requirement under Section 52 A of the N.D.P.S. Act nor those articles were produced before the trial court nor the seized articles were sent to FSL for examination nor information was given to the superior officer as provided under section 57 of N.D.P.S. Act. As there is rigorous punishment under the N.D.P.S. Act as such certain restrictions have been provided like provision of Sections 42, 50, 52A, 57 of the N.D.P.S. Act. However, requirement of sections 52A and 57 had not been followed and further there is requirement to produce the articles before the Special Judge within 24 hours but in the present case, it appears that those provisions have not been followed. Even the seized articles have not been produced at the time of trial and only relying evidence of P.W.1, appellants have been convicted, which does not appear to be sustainable in the eye of law.

10. Accordingly, these appeals are allowed and the judgment and order are set aside. Appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)



N.H./-

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