

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1836 of 2017

Arising Out of PS.Case No. -20 Year- 2015 Thana -GAYA GRP CASE

District- GAYA

=====

Vikash Kumar Sinha, Son of Vijay Kumar Sinha, Resident of
Mohalla-Nai Godam, P.S.-Kotwali, District-Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party
with

=====

Criminal Appeal (SJ) No. 2081 of 2017

Arising Out of PS.Case No. -20 Year- 2015 Thana -GAYA RAIL P.S.

District- GAYA

=====

Sunny Kumar, S/o Ashok Prasad Gupta, resident of Nai Godam,
P.S.-Kotwali, Distt.-Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

=====

Appearance :

(In CR. APP (SJ) No.1836 of 2017)

For the Appellant : Mr. Ajay Kr. Thakur, Adv.
Mr. Imteyaz Ahmed, Adv.
Ms. Swati Sinha, Adv.

For the State : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No.2081 of 2017)

For the Appellant : Mr. Bakshi S.R.P. Sinha, Sr. Adv.

For the State : Mr. Sujit Kumar Singh, APP

=====



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 25-07-2018

Both the appeals have been heard together and are being disposed of by this common judgment.

2. Both the appellants, viz. Vikash Kumar Sinha and Sunny Kumar, have been convicted under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "the N.D.P.S. Act, 1985"*) by judgment dated 27.05.2017, passed by the learned 1st Addl. District Judge-Cum-Special Judge (N.D.P.S. Act), Gaya in N.D.P.S. Case No. 17 of 2015, arising out of Gaya Rail P.S. Case No. 20 of 2015, and by order dated 03.06.2017, they have been sentenced to undergo rigorous imprisonment for eight years each for both the offences, to pay a fine of Rs. 50,000/- and in default of payment of fine, to further suffer rigorous imprisonment for two years. The sentences, however, have been ordered to run concurrently.

3. Appellant/Sunny Kumar (*Cr. Appeal (SJ) No. 2081 of 2017*) was arrested on Platform No. 10 of Gaya Railway Station and was found in possession of a blue trolley bag which contained 20 kgs. of Ganja, kept in four packets. The name of the appellant/Vikash Kumar Sinha (*Cr. Appeal (SJ) No. 1836 of 2017*) was taken by aforesaid



appellant/Sunny Kumar.

4. The case of the prosecution is based on the self-statement of Raj Kumar, Sub-Inspector of Police, who has been examined as P.W. 1 (informant) at the trial. He has alleged that on 18.03.2015 at about 8 O'clock, he along with the police party was on patrolling duty at the Gaya Railway Station. In the meantime, *Palamau* Express train arrived on Platform No. 4. Later, the aforesaid witness received secret information that some persons are coming on Platform No. 10 with narcotics. On this information, the informant/P.W. 1 alerted the members of the police team and intercepted one *Yamaha* motorcycle, which was being driven by one person and another was the pillion rider. Taking advantage of darkness, the person who was driving the motorcycle, ran away. However, the pillion rider, who was carrying a blue trolley bag with him, was arrested. He disclosed his name as Sunny Kumar. On further probe, the name of his associate was taken by him as Vikash Kumar Sinha, who is one of the appellants before this Court. From the possession of appellant/Sunny Kumar, 20 kgs. of *Ganja* was recovered. The seizure-list was prepared in presence of Vipul Pandey and Upendra Kumar (independent witnesses), who have been examined as P.Ws. 7 and 8 respectively at the trial.



5. On the basis of the aforesaid self-statement, a case *vide* Gaya Rail P.S. Case No. 20 of 2015, dated 18.03.2015, was instituted for investigation for the offences under Sections 20 and 22 of the N.D.P.S. Act.

6. The police, after investigation submitted charge-sheet only against appellant/Sunny Kumar and did not send-up appellant/Vikash Kumar Sinha for facing trial. The learned Chief Judicial Magistrate, however, differing with the police report, took cognizance against both the appellants and committed the case to the Special Court for trial.

7. The learned Trial Court, after examining eight (8) witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

8. Mr. Bakshi S.R.P. Sinha, learned Senior Advocate and Mr. Ajay Thakur, learned Advocate, who appeared on behalf of the appellants, have submitted that the judgment and order of conviction is only based on conjectures and surmises and without there being any cogent evidence, the appellants have unnecessarily been convicted and sentenced. It has further been argued that the established principles of appreciating the evidence have been given a complete go-by and the judgment of guilt arrived at by Trial Court, is against the weight of



overwhelming evidence. Lastly, it has been submitted that the mandatory provisions of the N.D.P.S. Act, 1985 have been flouted with impunity by the investigating agency and the seized narcotics was also not produced in the Court. It was further urged that there has been a blatant violation of provisions of Section 42(2) and 52-A of the N.D.P.S. Act, 1985.

9. In order to appreciate the contentions of the appellants, it would be necessary to go through, briefly, the deposition of the witnesses offered on behalf of the prosecution.

10. Raj Kumar, who is the informant of this case, has been examined as P.W. 1. He has, though, supported the prosecution version and has reiterated his statement made by him in the F.I.R., but he, in his cross-examination, has stated that before searching the person of appellant/Sunny Kumar, he or his police team did not submit themselves for search by aforesaid Sunny Kumar. Though, he has stated before the Trial Court that the seized *Ganja* was sealed and the seizure-list was prepared, but the aforesaid statement has not been supported by the other witnesses offered on behalf of the prosecution, who were part of the raiding team.

11. From the deposition of P.W.1/informant, it



cannot be inferred clearly that the requirement of reducing the secret information in writing and transmitting it to the superior police officer has been followed. True it is that the information regarding some persons coming with narcotics at the railway station was received by P.W. 1 during the course of patrolling; nonetheless requirement of law is that even after the raid, the information search and seizure is required to be reduced in writing and transmitted to the superior police officer. That apart, it cannot also be believed from his deposition that the samples were drawn at the place of seizure. Though, the aforesaid witness has spoken of having sealed the packets, but there is no reference of putting any distinct mark over such seal. Not drawing the sample at the time of search/seizure is also a violation of Section 52-A of the N.D.P.S. Act.

12. The Investigating Officer of this case, *viz.* Taslim Khan has been examined as P.W. 2. He took-up the charge of investigation on the same day, *i.e.* 18.03.2015. He, in his examination-in-chief, has stated that he had sent the requisition to the Court for sending the sample to the F.S.L. on 24.03.2015 and after the order by the concerned Court, the samples were drawn and the rest of the consignment was kept back in the *Malkhana*. The samples were sent to the F.S.L. and till the time of filing charge-



sheet, the report of F.S.L. had not been received.

13. From the deposition of P.W. 2 also, it does not come out clearly as to where the seized narcotic was kept from 18.03.2015 to 24.03.2015 or thereafter. There is no reference of the seized narcotics being kept in *Malkhana* immediately. Whether the consignment was kept in the police station or at *Malkhana* is not known. What P.W. 2 has only stated before the Trial Court is that the samples were drawn after necessary orders were obtained by him from the concerned Court and, thereafter, the consignment was kept in the *Malkhana*.

14. Learned counsel for the appellants have stated that even if this statement is accepted, it would mean that after the samples were drawn, the consignment was sent to the *Malkhana*. Had it not been the case, P.W. 2 or for that matter P.W. 1, would have stated clearly that the consignment was sent to *Malkhana* after the same was sealed at the place of search and seizure and the samples were drawn at *Malkhana*. The manner in which the samples are said to have been drawn, also does not conform to the requirement laid down under the N.D.P.S. Act, 1985.

15. Both the aforesaid appellants have testified to the fact that the consignment of narcotics was not produced before the Court.



16. The aforesaid witness (P.W. 2) has also admitted that he did not make any reference of railway ticket of *Rajdhani* Express, which was recovered from appellant/Sunny Kumar in the investigation report. Though, the suggestion given to the aforesaid witnesses that the appellants have been arrested in this case only on suspicion, has been denied, but the circumstances show that the place where the seizure was made is a dark area, without any provision for lighting. It also appears from the deposition of P.W. 2 that appellant/Vikash Kumar Sinha is a regular student of a college and does not have any criminal antecedent. The motorcycle which was seized in connection with the aforesaid case was found to be registered in the name of appellant/Vikash Kumar Sinha.

17. Ajeet Kumar, one of the members of the raiding team, has been examined as P.W. 3. He, in his cross-examination, has stated that after the seizure, the narcotics was brought to the parcel office where it was weighed and, thereafter, the consignment was brought to the police station where the seizure-list was prepared. This statement is different from what has been narrated by the informant (P.W. 1) or the Investigating Officer (P.W. 2). He has also admitted that none of the members of the raiding team offered themselves for being searched before



conducting search on appellant/Sunny Kumar. He has also categorically admitted that the seized narcotics was not sealed in his presence.

18. Balkeshwar Prasad, another member of the raiding team, has been examined as P.W. 4. He has given a different version at the trial. He has stated that the seizure-list was prepared at the place of search and was sealed there only. The packets of the narcotics were tied and sealed by the informant. However, he could not remember the number of the seal.

19. What is of relevance in the deposition of the aforesaid witness is that he deposed before the Trial Court for the first time and his statement was not taken by P.W. 2 (Investigating Officer). Even, Gaya Prasad (P.W. 5), a constable and the member of the raiding team, also did not give any statement before the police and deposed before the Trial Court for the first time. In his cross-examination, he has stated that he was on duty at Platform Nos. 1 to 7, but on the asking of P.W. 1, he went to Platform No. 10.

20. The seizure-list witnesses, viz. P.Ws. 7 and 8 have not supported the prosecution version and have been declared hostile.

21. Thus, from the conspectus of the deposition of the witnesses what becomes evident is that the secret



information which was received by P.W. 1 (informant) was not reduced in writing and sent to the superior police officer, thus breaking the provisions of Clause (2) of Section 42 of the N.D.P.S. Act. There is no reference in the F.I.R. or in the deposition of either P.W. 1 or P.W. 2 that the aforesaid requirement of law was complied with. What further appears from the record is that the weighment of the seized narcotics was done in the parcel office of the Railway Police Station and from there, the consignment was brought to the police station where the seizure-list was prepared. The samples were admittedly not drawn at that time and place and after about 7 – 8 days, permission was sought from the concerned Court for drawing and sending the samples to the F.S.L. Where was the sample drawn is also not ascertainable from the deposition of the witnesses. Where was the consignment kept, in the meanwhile, is also not known.

22. In that view of the matter, even if the F.S.L. report confirms that the samples correspond to the ingredients of *Ganja*, that could be of no avail so far the appellants are concerned. Non-production of the narcotics before the Court, further makes the prosecution version absolutely doubtful. What was recovered from the possession of appellant/Sunny Kumar is, therefore, not



known. In the event of non-compliance of the mandatory provisions of the N.D.P.S. Act, it cannot be said with certainty that the samples, which were found to be *Ganja*, were drawn from the same consignment of narcotics which is said to have been recovered from the possession of the appellant/Sunny Kumar.

23. As against appellant/Vikash Kumar Sinha, the only evidence, therefore, is the statement of appellant/Sunny Kumar, which too was obtained by the police at the time of arrest of appellant/Sunny Kumar.

24. The provisions of N.D.P.S. Act are very harsh in its scope and ambit and, therefore, any departure from the said rules and the requirements of law, makes the prosecution case absolutely doubtful.

25. For the aforesaid reasons, benefit of doubt is required to be given to the appellants.

26. The judgment of conviction dated 27.05.2017 and order of sentence dated 03.06.2017, passed by the learned 1st Addl. District Judge-Cum-Special Judge (N.D.P.S. Act), Gaya in N.D.P.S. Case No. 17 of 2015, arising out of Gaya Rail P.S. Case No. 20 of 2015, is, therefore, set-aside.

27. Both the appeals are allowed.

28. Appellant/Vikash Kumar Sinha (*Cr. Appeal (SJ) No. 1836 of 2017*) and appellant/Sunny Kumar (*Cr. Appeal*



(SJ) No. 2081 of 2017) are in custody. They are directed to be released forthwith from jail, if not wanted in any other criminal case.

29. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.07.2018
Transmission Date	28.07.2018

