

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.72 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHABHUA (KAIMUR)

=====

Munna Singh, S/o Sheo Pujan Singh, r/v Betari, P.S.-Bhabhua, District-Kaimur at Bhabhua.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vikram Deo Singh

Mr. Pawan Kumar Singh

For the Respondent/s : Mr. Binod Bihari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-09-2018

By judgment dated 09.01.2009 passed by learned Additional Session Judge 1st, Kaimur at Bhabhua in Trial No. 22 of 2006, arising out of Bhabhua P.S. Case No. 182/2006, the appellant Munna Singh has been convicted under Section 21(B) of the N.D.P.S. Act, 1985 and by order dated 16.01.2009, he has been sentenced to undergo R.I. for five years with fine of Rs. 10,000/- and in default of payment of fine, to further undergo R.I. for one year.

2. Heard the learned counsel for the appellant as well as the State.

3. The prosecution case, in brief, is that informant Manju Singh, S.I. of Bhabhua Police Station received secret information that accused Munna Singh is selling *Heroin* in his house situated in village Betari. Thereafter, the informant along with other police personnel



proceeded for the place of occurrence. After seeing the police party, 5 to 7 persons started running away towards north in the village. On chase, one person was apprehended, who disclosed his name as Munna Singh of village Betari and other accused persons managed to escape. The accused Munna Singh was informed that Magistrate is also present and the person of the accused will be searched. The accused became ready for search. Search was conducted in presence of Magistrate and two independent witnesses. After search 6 sachets of *Heroin* like substance was recovered from possession of accused Munna Singh (appellant). House of appellant Munna Singh was also searched and from there *Heroin* kept in 9 sachets were recovered. Accused Munna Singh disclosed that the recovered article is *Heroin*. He further disclosed that he has received Rs. 595/- from selling of *Heroin*. The recovered *Heroin* was weighed and after weight it was found to be 25gm. Seizure-list was also prepared at the spot on which independent witnesses, Magistrate and accused Munna Singh put their signature. Copy of seizure-list was also handed over to accused Munna Singh. The seized *Heroin* was sealed and two samples were prepared of the seized *Heroin* for sending it to Forensic Science Laboratory for its chemical examination.

4. On the basis of aforesaid written report, Bhabhua P.S. Case No. 182 of 2006 was instituted for offences under Sections



21, 22, 25 and 27(A) of the NDPS Act, 1985.

5. During trial, altogether six witnesses have been examined on behalf of prosecution.

6. P.Ws. 1 and 2 are seizure-list witnesses. They have turned hostile. They have stated in their examination-in-chief that they do not know anything about the occurrence and their statement was not recorded by police.

7. P.W. 3 is S.I. of police. He was one of the member of raiding party. He has supported the case. He has stated that he along with other police personnel had gone for raid towards house of Munna Singh and saw 7 to 8 persons started running away after seeing the vehicle of police. He has further stated that after chase one person was apprehended and other persons managed to run away. The apprehended person disclosed his name as Munna Singh. Person of accused Munna Singh was searched in presence of independent witnesses and Magistrate and from his possession 6 sachets of *Heroin* was recovered. Munna Singh was brought to his house and his house was also searched from where 9 sachets of *Heroin* were recovered, which was kept in a room and Rs. 595/- in cash was also recovered from his Almirah. The accused Munna Singh disclosed that the amount is sale-proceed. P.W. 3 has further stated in his evidence that the recovered *Heroin* was tested from the chemical Kit and the same



was found to be *Heroin*. When the same was weighed, it was found to be 25gm. The recovered *Heroin* was divided into two parts and it was sealed and seizure-list was prepared at the spot. He has further stated that the accused was arrested and brought to Police Station. This witness has proved the seizure-list, which is in the writing and signature of S.I. Manju Singh, which has been marked as Ext. 1. He has also proved the written report, which is in the writing and signature of S.I. Manju Singh, which has been marked as Ext. 2.

8. Manju Singh (P.W. 4) is informant of the case. She has stated in her evidence that she received information that accused Munna Singh is selling contraband substance. Then she recorded Sanha entry and conducted raid along with other police party and apprehended the appellant Munna Singh. She recovered 6 sachets of *Heroin* like substance from possession of the appellant. She also recovered 9 sachets of *Heroin* and cash of Rs. 595/- from the house of appellant Munna Singh.

9. P.W. 5, Nawal Kishore Ram, is also S.I. of police and was member of raiding party. He has stated in his evidence that he along with other police personnel and deputed Magistrate Naresh Sharma conducted raid at the house of accused Munna Singh. He has stated that after seeing the police party 5 to 6 persons started running away towards north direction and on chase accused Munna Singh was



apprehended. He was searched in presence of two independent witnesses and the Magistrate and 6 sachets of *Heroin* like substance was recovered from his possession. House of accused Munna Singh was also searched and from Almirah, kept in a room, 9 sachets of *Heroin* and cash of Rs. 595/- was recovered. The recovered *Heroin* was weighed and after weight it was found to be 25gm. He has further stated that the recovered article was sealed with the signature of the Magistrate. Accused Munna Singh was arrested and brought to police station.

10. P.W. 6, Hari Mohan Kumar, is I.O. of the case. He has stated that on the date of occurrence, he took charge of investigation of the case. He has stated in his evidence that the house of appellant Munna Singh was searched and *Heroin* was recovered from two places; first, recovered from possession of appellant and second, from the house of appellant. He has described the place of occurrence in his evidence and recorded the statement of witnesses and sent the seized article to Forensic Science Laboratory for examination. He has further stated that after completion of investigation, he submitted charge-sheet.

11. One witness has been examined on behalf of defence, namely, Ganga Prasad Singh as D.W. 1. He is formal witness who has proved the complaint petition filed by one Om Prakash Seth



bearing Complaint Case No. 191(C)/2002, in which name of present appellant figured as an accused along with five co-accused. Date of aforesaid occurrence was 09.03.2002.

12. The test report of Forensic Science Laboratory was brought on record in the court below, which has been marked as Ext.

3. The report of Forensic Science Laboratory speaks that the sample seized from appellant contains *Heroin*.

13. Learned counsel for the appellant has argued that in the instant case recovery has been made from two places, i.e. from possession of appellant and from house of the appellant, but there is no evidence that seized articles were mixed and thereafter sample were taken. He has stated that there is no evidence that samples were prepared from the seized article. It is further argued that the part of seized samples were never produced in Court. It is further argued that the occurrence is said to have taken place on 28.06.2006 and the sample was sent for examination after delay of more than three months on 19.09.2006. He has relied on decision of Hon'ble Supreme Court in case of *Valsala Vs. State of Kerala* reported in **1994 CRI.L.J. 1 (SC)** in support of his submission with regard to delay in sending the sample for examination.

14. Learned counsel for appellant has also relied on decision of Hon'ble Supreme Court in case of *Union of India V.*



Jarooparam reported in *AIR 2018 SC 1927* in support of his argument that prosecution has failed to produce the seized articles, which creates doubt on genuineness of samples.

15. This Court after looking into evidence of prosecution witnesses finds that the witnesses have stated that seizure was made from personal possession of the appellant as well as from his house. P.W. 3 (informant) has stated that seized articles were divided into two parts and thereafter they were sealed and seized and seizure-list was prepared on the spot and sent for chemical examination. The seizure-list is part of the F.I.R. from which it appears that seizure has been made from two different places. But there is no evidence that both seized samples were mixed together and thereafter sent for chemical examination.

16. It appears from the report of F.S.L., which has been marked as Ext. 3, that the samples were sent for chemical examination on 19.09.2006 whereas seizure is alleged to have been made on 28.06.2006. The Hon'ble Supreme Court in case of *Valsala Vs. State of Kerala* reported in *1994 CRL.J. 1 (SC)* has held that delay of more than three months in sending seized articles for chemical examination creates doubt as to whether seized articles were kept in proper custody in police station.

17. In the instant case, there is no any such evidence



that articles were kept properly in the police station and were sent for chemical examination after adopting all proper means. This Hon'ble Court in case of *Sanjeev Barman Vs. State of Bihar* reported in *2011(2) PLJR 921* has held that *samples from each packets were not taken nor separately weighed. The prosecution has not been able to be specific about the weights of all the packets so recovered and also about the proper taking of samples from each of the packets and in absence of all such mandatory requirements, conviction of the appellant cannot be upheld.*

18. This Court further finds that it is mentioned in the F.I.R. that on getting information that some persons are selling *Heroin*, the informant reached at the place of occurrence along with other police personnel and one Magistrate (Circle Inspector) and apprehended the appellant. It is mentioned in the written report that accused Munna Singh was informed that Magistrate is also present and the person of the accused will be searched. The accused became ready for search. Thereafter, search was made. It is alleged that seizure-list was prepared bearing signature of the appellant as well as the concerned Magistrate. The concerned Magistrate did not appear for evidence in Court. Both independent seizure-list witnesses have also turned hostile. Seizure-list has been prepared by informant (P.W. 4).



19. In such circumstances, the prosecution has not been able to prove the correctness and genuineness of the seizure-list by reliable evidence. The appellant has specifically denied in his statement recorded under Section 313 Cr.P.C. about recovery of any *Heroin* either from his possession or from his house.

20. This Court from the evidence of the prosecution witnesses does not find any proper compliance of the provision under Section 50 of the NDPS Act, 1985 at the time of making search of the appellant and preparation of seizure-list.

Section 50 of the NDPS Act, 1985 speaks as under:

“50. Conditions under which search of persons shall be conducted. – (1) When any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section(1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.



(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a seventy-two hours send a copy thereof to his immediate official superior."

21. Therefore, on the basis of such laches on the part of the prosecution and having no reliable evidence with regard to valid search and seizure of the appellant and recovery of alleged articles from his possession, this Court is of the view that prosecution has not been able to substantiate the charge levelled against the appellant beyond all reasonable doubt.

22. The appellant is accordingly acquitted from the charge levelled against him.

23. The judgment of conviction dated 09.01.2009 and order of sentence dated 16.01.2009 passed by learned 1st Additional



Sessions Judge, Kaimur at Bhabhua is set aside.

24. This Criminal Appeal is allowed.

25. The appellant is on bail. He is discharged from liability of his bail bond.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.09.2018
Transmission Date	18.09.2018

