

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.751 of 2016

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Ajay Kumar Gupta son of Late Akhilanand Prasad R/o - Flat No. 402, Vidya Niwas, Road No. 11F, Mohalla, Rajendra Nagar. P.S. Kadamkuan, District Patna

.... Appellant/s

Versus

The Union of India, Through Intelligence officer, Narcotics Control Bureau, Patna

.... Respondent/s

with

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Criminal Appeal (SJ) No. 647 of 2016

Arising Out of PS.Case No. -1 Year- 2013 Thana -
GOVERNMENT OFFICIAL COMP. District-
VAISHALI(HAJIPUR)

=====

Sanjay Kumar, son of Devendra Prasad, resident at Mohalla-S.N. Road, Salempur Chapra, P.S.-Chapra Town, District-Saran at Chapra

.... Appellant/s

Versus

1. The State of Bihar
2. The Union of India through Intelligence Officer, Narcotics Control Bureau, Patna

.... Respondent/s

with

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Criminal Appeal (SJ) No. 807 of 2016

Arising Out of PS.Case No. -1 Year- 2013 Thana -
GOVERNMENT OFFICIAL COMP. District-
VAISHALI(HAJIPUR)

=====

Jasvindar Singh @ Kooki, son of Late Sardar Harvansh Singh, Resident of 288/104 Arya Nagar, Lucknow, P.S.- Naka- Hindoula, District- Lucknow (U.P.)

.... Appellant/s

Versus

The Union of India through Intelligence Office, Narcotic Control Bureau, Patna

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.751 of 2016)

For the Appellant/s : Mr. P.N. Sahi, Sr. Advocate
Mr. Ravindra Kumar, Advocate

For the Union of India : Mr. Ram Anurag Singh

(In CR. APP (SJ) No.647 of 2016)

For the Appellant/s : Mr. Jitendra Singh, Sr. Adv

For the Union of India : Mr. Awadhesh Kumar Pandey

(In CR. APP (SJ) No.807 of 2016)

For the Appellant/s : Mr. Suraj Narayan Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date: 17-05-2018

All the appeals have been heard together and a common judgment is being passed.

2. The appellants Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) have been convicted under Section 22(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 and appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) has been convicted under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and all have been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 1,00,000/-(one lakh) and in default of payment of fine, to further suffer rigorous imprisonment for two years for the offences under Sections 22(C) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 respectively by judgment and order dated 02.08.2016 passed by the learned Additional



Sessions Judge, 1st, Vaishali at Hajipur in C2A01 of 2013.

3. Sujeet Kumar (P.W. 5), Intelligence Officer, Narcotics Control Bureau (N.C.B), Zonal Unit has lodged a complaint alleging that on 21.12.2013, one Rohit Srivastava (P.W. 4), an Intelligence Officer, N.C.B, Patna Zonal Unit received a secret information that a consignment of pentazocine, a psychotropic substance is being transported illegally by a person in turban from Hajipur to Lucknow by train for being sold in the market as an intoxicating item. The aforesaid information was reduced in writing and Sri. Vikash Kumar (P.W.8), Superintendent, N.C.B was informed about the same. A team was constituted comprising Rohit Srivastava (P.W. 4), Gyan Prakash (P.W. 1), Bikash Kumar (P.W. 6), Ram Balak Chaudhary, D.E.O, Ravi Ranjan Kumar, Surveillance Assistant (P.W. 7), Manoj Kumar Yadav (Sepoy) and Satish Chandra, Driver. The aforesaid team reached Hajipur Railway Station on the same day at 19:30 hours. One Piyush Ranjan (P.W. 2), Booking Clerk, Parcel House was apprised of the secret information. Aforesaid Piyush Ranjan (P.W. 2) confirmed that at about 19:00 hours, the appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had got a consignment booked in his office which was weighed by Sudeshwar Sah (P.W. 3). Aforesaid Sudeshwar Sah (P.W. 3) also confirmed the information provided by P.W. 2. Both, P.W.s 2 and 3 were made known the purpose of



the visit of the raiding team. The aforesaid prosecution witnesses were requested to become independent witnesses of the search and seizure operation to which they agreed.

4. It has further been alleged in the complaint petition that the raiding team mounted surveillance near the Parcel House. In the meantime, the informer indicated that appellant/Javindar Singh @ Kooki (Cr. Appeal No. 807/2016) was approaching the Parcel House. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was intercepted and was given the identity of the raiding team and the purpose for putting him to search and seizure. A notice under Section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 was served upon him and he was told about his legal right to get himself searched in presence of a Magistrate or a Gazetted Officer. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) agreed for his being searched by the members of the raiding team. But before searching him, the members of the team offered themselves for search by him which he declined. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) is alleged to have identified the consignment which he had booked from the Railway Parcel House. The booking with respect to the aforesaid consignment was cancelled. On lawful search of the aforesaid consignment, 30 cartons of pentazodine (fortwin) manufactured by Ranbaxy company was recovered.



The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) could not furnish any document authorizing him to sell, purchase or transport the aforesaid psychotropic drug or his drug license.

5. Piyush Ranjan (P.W. 2), on demand by the team, furnished the attested copies of the voucher and the booking form. From the perusal of the booking form, it appeared that it was being transported under the banner of surgical goods. The name of the drug viz. pentazocine appeared to have been withheld. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) admitted before the team that he had transported a number of times pentazocine injection from Patna to Lucknow for being sold in the market.

6. The consignment was seized and samples were drawn from the said consignment. The samples were kept separately in hot sealed transparent plastic packet covered under a departmental seal. The rest of the consignment was packed and sealed in a cloth. Over the samples and the remainder consignment, signature of the Seizing Officer and appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was taken. The aforesaid process of search and seizure was conducted in the Parcel House, Hajipur Railway Station. A search-cum-seizure memo was prepared there only which was signed by the members of the raiding team and the independent



witnesses. The aforesaid seizure memo was also signed by the appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016). Thereafter, the voluntary statement of appellant/Jasvinder Singh @ Kooki was recorded under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985 on 21.12.2013 and 22.12.2013. The appellant/Jasvinder Singh @ Kooki is said to have admitted that he is a hawker who purchased medicines from Govind Mitra Road, Patna and sold the same at Lucknow, Uttar Pradesh. He claimed to have purchased fortwin injection from appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and Arun Singh several times. Aforesaid Arun Singh is stated to be a hawker of Kolkata who purchased medicines from Kalkota and sold it in Patna. The appellant/Jasvinder Singh @ Kooki gave the address of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) of Rajendra Nagar, Road No. 10, Patna who also was described by the appellant/Jasvinder Singh @ Kooki as an old hawker of Govind Mitra Road, Patna.

7. The samples which were drawn were sent to the Chemical Laboratory, Custom House, Kolkata on 23.12.2013 but it was returned untested because the laboratory did not have the standard reference samples of pentazocine as well as the test method. It was advised by the Chemical Laboratory, Custom House, Kolkata that the samples may be forwarded to the Central Forensic Science Laboratory, Kolkata for chemical



examination. Accordingly, the untested and unopened samples were sent to the Director of Central Forensic Science Laboratory, Kolkata on 26.12.2013. The result obtained declared that the samples were found positive for pentazocine.

8. The address provided by the appellant/Jasvindar Singh @ Kooki of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was not found to be correct. It was found that appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) lived in Road No. 11 (F) of Rajendra Nagar, Patna. His house was also raided by the team of N.C.B. Appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was arrested on 22.12.2013 after his statement was recorded under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

9. The appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) had revealed that he owns a medicine shop in Katra Market, Govind Mitra Road, Patna under the name and style of M/S Mangalam Drug Agency. He had a valid license No. 146/146A issued from the office of the Controller of Drugs, Bihar, Patna. He further revealed that he knew the appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) from before who regularly came to Patna for purchase of medicines. On 20.12.2013, it was stated by the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) that appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016)



came to his medicine shop and demanded 40 cartons of fortwin injection. He could provide only 30 cartons to him on payment in cash. The appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) had purchased the aforesaid fortwin injection priced at Rs. 52 per ample and had sold it to appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) at the rate of Rs. 53.27 per ample. The margin of profit was stated to be only Rs. 2400/-. The aforesaid consignment was obtained by the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) from appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) who ran a medical shop at Chapra under the name and style of M/s Maheshwari Medical Hall. On the request of the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016), appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) had sent 30 cartons of fortwin injection which was sold to appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016).

10. The appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) produced his drug license before the raiding team. During the further follow up action, the N.C.B team visited the appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) on the same day i.e. on 22.12.2013 and his statement also was taken under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985 whereafter he was arrested on the same day. The aforesaid appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is



said to have disclosed that he is a medicine trader by profession and had a shop under the name and style of M/S Maheshwari Medical Hall at Chapra. The drug license No. 41(SA) 41A (SA) was issued in the name of his wife Smt. Dimple Gupta. He claimed to be the stockist of around 15 companies including Ranbaxy. The aforesaid appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) disclosed that he knew the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) from before and on his demand, he had sent 30 cartons of fortwin injection. However, he did not know about the person who was sold the aforesaid consignment by appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). He had no idea about the appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016). The aforesaid consignment was stated to have been sent to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) on his verbal demand.

11. Thus, it was alleged that the appellants had committed the offence under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 for violation of Section 8(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985.

12. On the basis of the aforesaid complaint petition, a case vide C2A1/13 was registered.

13. After investigation, charge-sheet was submitted



whereupon cognizance was taken and the case was committed to the Special Court for trial.

14. The Trial Court, after examining eight witnesses on behalf of the prosecution and one on behalf of the defence namely appellant/ Sanjay Kumar himself, returned the finding of guilt and convicted and sentenced the appellants as aforesaid.

15. Mr. Jitendra Singh, learned senior advocate appearing for the appellant/Sanjay Kumar (Cr. Appeal No. 647/2016), while assailing the judgment and order of conviction submitted that the appellant had the license to sell, stock and exhibit for sale and distribute wholesale drugs other than those specified in schedule C, C(1) and X. The appellant was also a licensee under form 21B for drugs as specified in Schedule C and C1, except those in Schedule X. The license of the appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) was renewed from 28.05.2011 to 27.05.20-14. By virtue of the aforesaid license (Ext-A, A/1 and B), the appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) could have sold the drugs in question to any licensed dealer. It was further submitted that appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is a stockist of Ranbaxy company for medicines including fortwin which contains pentazocine and for which license is required. The consignment in question was transported and conveyed to a licensed dealer viz. appellant/Ajay Kumar Gupta(M/s Mangalam



Drugs Agency) on his request. The appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was known to appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) as a licensed drug dealer and therefore there was no reason for him not to have delivered the aforesaid consignment of fortwin injection. It was, therefore submitted that in the absence of any material on record to suggest that appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) knew that appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) whom he had conveyed the drug in question would sell it to some unlicensed dealer, no conviction could have been recorded under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, against the appellant/Sanjay Kumar.

16. Mr. Pushkar Narain Sahi, learned senior advocate who appeared on behalf of the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) submitted that the entire prosecution case was concocted and highly unreliable. In support of the aforesaid contention, it was submitted by Mr. Sahi that in the first instance, it appeared to be highly improbable that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) would, after booking the consignment, return to the Parcel Office. Apart from this, it was submitted that no search or seizure was made at Hajipur on 21.12.2013 which was evident from the deposition of Piyush Ranjan (P.W. 2) and Sudeshwar Sah (P.W. 3) who have deposed that the seized goods were



brought to the N.C.B office at Patna where the seizure list was prepared. Assailing the judgment and order of conviction, it was argued that no sample was drawn at Hajipur and no inventory as mandated under the Narcotic Drugs & Psychotropic Substances Act, 1985 was made. With reference to the statement of appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985, it was submitted on behalf of the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) that appellant/Jasvinder Singh @ Kooki never disclosed as to for whom, he had procured the fortwin injunction. There is no document on record to show purchase of the seized fortwin injunction from the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). The address provided by appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was also not found to be correct.

17. Curiously, it was argued on behalf of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) that even when appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had categorically stated that he used to purchase medicines from him as well as Arun Singh, no investigation was carried out against Arun Singh. No investigation was made with respect to the telephone calls made by appellant/Ajay Kumar Gupta (Cr.



Appeal No. 751/2016), making a request to appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) for the supply of fortwin injection. It was further submitted that in view of the statement of proprietor of Vishnu Travels, it became apparent that whatever consignment was sent to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) by appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) it was not against the verbal order of fortwin injection as one consignment had reached the place of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) on 20.12.2013.

18. Non-examination of Dimple Gupta, wife of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) in whose name the license has been issued and who is the proprietor of the transport agency has caused definite prejudice to the case of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016).

19. Mr. Suraj Narayan Prasad Sinha, learned senior advocate appearing for appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) has submitted that there has been a complete violation of the mandatory provisions of Sections 42 and 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985. It was further submitted that when once the samples were returned by the Chemical Laboratory, fresh permission ought to have been taken from the Court for sending those samples to C.F.S.L and in the absence of any Court permission, the report



by the C.F.S.L could not have been relied upon. It was also contended that the signature of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) on the booking documents was not authenticated during investigation to ascertain whether the consignment of fortwin injection in question was actually booked by the appellant. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) is stated to have fallen a victim of circumstances. In fact, it has been argued, he had come to Patna for paying obeisance in Patna Saheb Gurudwara and while returning, he was arrested on suspicion.

20. In order to appreciate the contention of the appellants, it would be necessary to briefly go through the deposition of the prosecution witnesses and examine the documentary evidence produced on their behalf.

21. Gyan Prakash (P.W. 1) has supported the prosecution version of a secret information having been received by Rohit Srivastava (P.W. 4) about the impending transport of pentazocine; which information was reduced in writing. He has testified that a raiding team was constituted of which he along with others were members and which team had visited the Hajipur Railway Parcel Office where appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was arrested and the consignment which was booked by appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) for Lucknow was cancelled and



seized. He has specifically stated that the contents of the cartons were divided in three lots and samples were drawn which were put in hot seal and the remaining of the consignment was also sealed in a markin cloth. A search-cum-seizure list was prepared and the statement of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was taken under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

22. In his cross examination, P.W. 1 has stated that the name of appellant Ajay Kumar Gupta was taken by appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016). However, he did not remember whether the seized articles were weighed or not. In his cross examination, however, he has stated that the appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was not arrested at the place of occurrence. He was taken to N.C.B Patna after recording his statement. The statement of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was recorded by the seizing Officer. He could not explain the reason as to why the statement of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was not taken at the Railway Parcel Office. However, he has admitted that on the same day, the statement of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was recorded. He has also admitted in his cross examination that the seizure list was prepared at the place of occurrence on which



he along with other members had signed. He has identified his signature over the said seizure list.

23. Piyus Ranjan (P.W. 2), the Booking Clerk has stated in his examination-in-chief that appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) had come to the Parcel Office to get a medicine consignment booked for Lucknow. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) asked for the booking form and filled the same and gave it to P.W. 2 along with his identity card. He has proved the handwriting of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) on the form which was filled in his presence by appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016)-Ext-3.

24. The appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) had also counter signed his identity card and the voter card (Ext-4). He has deposed that at about 7:30 in the evening on the same day, the N.C.B team had come from Patna. He had informed the team that appellant/Jasvindar Singh @ Kooki had got the consignment booked and that he had left the Parcel Office for having his dinner. The appellant/Jasvindar Singh @ Kooki, thereafter came to the Parcel Office again when he was intercepted. The consignment was opened by the N.C.B team in his presence. It contained several amples of fortwin injection. The samples from the aforesaid consignment were drawn at the



place of search and seizure.

25. Sudeshwar Sah (P.W. 3) has deposed that he had weighed the consignment on the asking of the appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) who had come with a bundle of medicines. After the weighment, the consignment was booked for Lucknow. Thereafter, it has been stated by P.W. 3, appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) left for having his dinner and came back only later, when he was arrested. He has proved his signature on the search and seizure memo. After the seizure, the entire consignment was taken by the raiding team to Patna. He also claims to have gone to the Patna office of the N.C.B. He claims to have seen appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) Singh for the first time when he had come for getting the consignment booked.

26. Rohit Srivastava (P.W. 4) has testified to the fact that he had received the secret information of transportation of a psychotropic substance in an unauthorized manner by a person in turban. He gave the aforesaid information to the Superintendent, N.C.B, Vikash Kumar (P.W. 8). He was part of the raiding team and had visited the Railway Parcel Office, Hajipur. The other version of the prosecution has been completely supported by him. He has, in his cross examination, stated that he had recorded the secret information in his own



writing and had also seen the booking document for parcel. He has denied the suggestion that no such occurrence had taken place or that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had not booked any consignment and was falsely implicated in this case.

27. Sujeet Kumar (P.W. 5) is the informant. He has supported the prosecution version in totality. In his cross examination, he has admitted that he was not a member of the raiding party and had not visited the Hajipur Railway Station. All the statements which he made in his examination-in-chief were on the basis of the papers which were perused by him. However, P.W.5 was present in the proceedings at Govind Mitra Road, Patna in the shop of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). He has admitted that at the shop of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016), no paper was prepared and nothing was recovered from his shop or residence. The premises of the shop of the appellant/Sanjay Kumar was also raided on the same day but no incriminating article was recovered from there also. The statement of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) was recorded by him in the N.C.B Office at Patna. The statement of the aforesaid appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) was scripted by him only. He had recorded the statement of the C.N.F Manager, Dilip Kumar Pandey. It was told by the aforesaid Dilip



Kumar Pandey that fortwin is manufactured by Ranbaxy company. He has also admitted that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) gave a wrong address of appellant/Ajay Kumar Gupta. Rajesh Kumar, the transporter, it has been deposed by P.W. 5, gave his statement on 20.12.2013 in which it is stated that the medicines which were sent by the appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) on 17.12.2013 were delivered on 20.12.2013 to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). The medicines which were sent on 21.12.2013 were actually received by Ajay Kumar Gupta on 24.12.2013. He has denied the suggestion that he has falsely implicated the appellants because of some business rivalry with his relative who also is in the business of medicine.

28. Bikash Kumar (P.W. 6) and Ravi Ranjan Kumar (P.W. 7) have also supported the prosecution version in their deposition before the trial Court.

29. Vikash Kumar, the Superintendent, N.C.B (P.W. 8) has deposed that on the alleged date and time of the occurrence, Rohit Srivastava (P.W. 4) informed him in writing about the consignment of fortwin. He constituted the team which had visited the Railway Parcel Office. The head of the team was Bikash Kumar (P.W. 6). The seized articles were produced before him at the N.C.B Office and thereafter, Sujeet Kumar (P.W. 5) proceeded further. The seized articles were deposited at



Malkhana which is evident from the entry in the *Malkhana* register. He has identified the proof of entry of the seized consignment in the *Malkhana*. He has proved the attestation of the same information (Ext 29). He has also proved the inventory (Ext-30). In his cross examination, he has categorically stated that he was in-charge of *Malkhana* when the consignment was deposited there. No contradiction could be obtained by the defence from the evidence of aforesaid P.W. 8.

30. It would also be relevant here in this context to refer to the statement of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) who has got himself examined as D.W. 1.

31. He has stated that he had produced MRP invoice dated 16.12.2013 in respect of M/s Maheshwari Medical Hall, Chapra and also identified his signature on it (Ext-C and C/1). He has also identified (Ext-C/2) which is the invoice No. 3256 dated 17.12.2013 testifying that he had purchased the medicines in the name of his shop. In his cross examination, he has deposed that M/s Maheshwari Medical Hall belongs to his wife but he looks after the same. Every billing is computer generated. He has further deposed that he always obtained fortwin injection from Ranbaxy company and had obtained 40 cartons of the aforesaid drug in the Month of December from the Ranbaxy company. In para 5 of his cross examination, he has stated that as a licensee, he had been trading with



appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) in the past. The appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) being a licensee was competent and authorized to be sold medicines. He has denied the suggestion that he had in fact given 30 cartons to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) but has shown 60 cartons for proving his innocence. He has also admitted that the invoices were prepared by him only but the serial number was wrongly typed.

32. Thus, from a conspectus of the oral and documentary evidence, it stands established that the secret information which was received by P.W. 4 was reduced in writing and sent to the Superior Officer. Thus, there is no violation of the provision of Section 42(2) of the Narcotic Drugs & Psychotropic Substances Act, 1985. The appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) was made known his right of being searched before a Gazetted Officer but he declined the aforesaid offer and agreed for being searched by the raiding team. It further appears that the independent witnesses namely P.W.s. 2 and 3 have testified to the prosecution version of apprehending appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) as having booked the consignment of the psychotropic drug without there being any license.

33. The witnesses have withstood the rigors of cross examination and it is difficult to believe as argued on behalf of



the appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) that he was wrongly arrested by the N.C.B team when he had come to Patna to visit the Gurdwara at Patna City. Even if the statement of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was not recorded in the Railway Parcel Office, that by itself would not be sufficient to discard the prosecution version. The search and seizure had taken place at Railway Parcel Office and appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) and the other members of the raiding team including independent witnesses came to the N.C.B office at Patna where the other formalities were completed. The statement of P.W. 4 that the signature of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was not taken on the sample for being tested does not appear to be correct as other witnesses have testified to the fact that his signature was obtained. The secret information which was reduced in writing may not have been brought to the Court but has been testified by P.W. 8 who had received the same and had constituted a raiding team for the purpose of intercepting appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016). The objection of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) regarding no fresh permission having been taken from the Court concerned for sending the sample to the C.F.S.L after the same was returned by the Chemical Laboratory, Custom Department,



Kolkata has no legs to stand. It was advised by the Chemical Laboratory, Kolkata only for sending the sample to C.F.S.L. No fault could be found with the sending of the samples to Kolkata as there has not been any delay in sending the same. The statement of appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985, and the depositions of P.W.s 2 and 3 completely establishes that the appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) only had booked the consignment from Hajipur to Lucknow. It has been admitted by him and which fact is borne out from the record that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) does not have any license to deal in drugs. In that view of the matter, he has made himself liable for being convicted and sentenced under Section 22(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985.

34. While saying so, this Court has taken note of the fact that the secret information was also regarding a person in turban; the informer identified appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) and P.W. 2, the Booking Clerk has testified to the fact that he had come to him for booking the consignment and had obtained booking form which was filled by appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016). The handwriting of appellant/Jasvinder Singh @ Kooki (Cr.



Appeal No. 807/2016) was also identified by P.W. 2.

35. This Court has also taken note of the fact that P.W. 3 also identified appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) as having asked him for weighing the consignment. P.W. 3 had put the consignment to the weighing machine on the asking of P.W. 2.

36. From the records as well as the deposition of the witnesses, it further gets established that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had purchased the consignment of the psychotropic substance from appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). This is evident from the fact that appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) had obtained fortwin injection from appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) on the asking of appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016). The evidence of the witnesses further revealed that appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) was known to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) as they were on trading terms from before. Merely because wrong residential address of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was given by appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016), that by itself would not discredit the prosecution version. It stands established that the seized drugs were obtained by



appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) from appellant/Sanjay Kumar (Cr. Appeal No. 647/2016). Since there was trading relationship between appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016), appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) ought to have known whether appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had the requisite license to be sold scheduled drugs. By selling the aforesaid drugs to a non-license holder, appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) has made himself liable again for being convicted and sentenced under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

37. With regard to no investigation being done against Arun Singh, who too was named by appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) in his statement under Section 67 of the Narcotic Drugs & Psychotropic Substances Act, 1985, evidence disclosed is that Arun Singh is also a medical hawker who used to purchase medicines from Kolkata and sold the same at Patna. Thus, no investigation against him was of any relevance so far as the case of the aforesaid two appellants are concerned. The statement of the transporter ought to have been recorded in order to further prove that the delivery of the consignment from the shop of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) was made to the shop of the



appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) but his non-examination also will not make the prosecution case doubtful. No benefit or advantage comes in favour of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) in there being no recovery from either his shop or his business establishment. There is no gainsaying the fact that appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) has a valid license to deal in drugs but in the present case, he has only been prosecuted and convicted for his having sold such psychotropic drugs to an unauthorized person leading to only presumption that such drug was sold for the purposes of being used as an intoxicant in the market thereby violating the provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985, warranting conviction and sentence. Since appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) is a licensee, he is expected to be aware of the legal requirement of selling such drugs to an unauthorized person.

38. As far as appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is concerned, there is no doubt that his wife has a valid license for dealing in such drugs and he has sold/conveyed the aforesaid drugs to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) whom he knew to be a license holder and who is in fact a license holder. There is nothing on record to infer that appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) knew that



such consignment would be sold to an unauthorized person. There is no reference of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) in the statement of appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016).

39. In that view of the matter, his implication in the present case does not appear to be warranted on any account.

40. Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 reads as follows:-

"Punishment for abetment and criminal conspiracy.-(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to the commit, as offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence



punishable under this Chapter, if committed within India."

41. There is no evidence at all regarding abetment or criminal conspiracy to commit any offence.

42. Thus, the conviction of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 is set aside.

43. The conviction and sentence of the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) are affirmed and upheld.

44. The appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is on bail. He is discharged of his liabilities of bail bonds.

45. The appeals are disposed of accordingly.

(Ashutosh Kumar, J)

Shageer/-

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