

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.511 of 2015

Arising Out of P.S. Case No. -31 Year- 2010 Thana -BHAGHA District- West Champaran
(Bettiah)

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JIUT MANJHI, SON OF LATE TEYAI MANJHI, RESIDENT OF
VILLAGE- PIPARDARI, P.S-SHERWA, DISTRICT-PARSA(NEPAL).

.... **APPELLANT/S**

VERSUS

THE STATE OF BIHAR

.... **RESPONDENT/S**

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Appearance:

For the Appellant/s : Mr. Ram Adya Singh, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 11-05-2018

Appellant, Jiut Manjhi vide judgment of conviction dated 09.06.2015 has been found guilty for an offence punishable under Section 22(c) of the N.D.P.S. Act and vide order of sentence dated 12.06.2015 has been directed to undergo R.I. for ten years as well as to pay fine appertaining to rupees one lac and in default thereof, to undergo S.I. for six months, additionally by the Additional Sessions Judge, Vth, West Champaran at Bettiah in connection with Trial No.28/2011 arising out of NDPS Case no.97/2010 based upon, Bhangaha P.S. Case No.31/2010.

2. PW.5, Dhananjay Verman, Inspector of S.S.B. 27th Battalion filed written report on 16.10.2010 along with seizure list, producing the seized Ganja weighing 52 kg. as well as appellant accused Jiut Manjhi alleging therein, that in preceding night of 15/16-10-2010 while they were on patrolling, they found smugglers sneaking inside Indian territory having bundles over their head. Perceiving their conduct to be suspicious they were challenged over which, they began to flee and some of them



succeeded in the escape after throwing bundles while one was apprehended with bundle who disclosed his name as Jiut Manjhi. The other bags were also collected. Accused along with the bundles so collected have been taken to the post it was weighed to be 52 Kg. Ganja and on account thereof, are being produced before the local police. It is evident that from the lower court record that after registration of Bhangaha P.S. Case No.31/2010, investigation commenced and concluded by way of submission of charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

3. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced on behalf of defence.

4. In order to substantiate its case prosecution had examined altogether five PWs who are PW.1-Pradeep Chetiya, PW.2-Kamal Singh, PW.3-Mahesh Bora, PW.4-Kripal Singh, PW.5-Dhananjay Verman. Side by side also exhibited signature of seizure list witnesses as Ext.1 Series, seizure list-Ext.2, signature of informant over seizure list-Ext.2/1, written report-Ext.3, production-cum-seizure list-Ext.4 and FSL Report-Ext.5. As stated above, nothing has been adduced in defence.

5. Gone through the lower court record, it is evident that Investigating Officer has not been examined. FSL report has been exhibited in accordance with Section 293 of the Cr.P.C. PW.1 to PW.5 out of whom PW.5 is the informant, happens to be the SSB



Personnel and during course of evidence, they have substantiated the prosecution version over apprehension of appellant along with 52 kg. of ganja while intruding inside Indian territory after crossing the border at pillar no.423 but, from their evidences, it is evident that mandatory provisions as required to be followed by the prosecuting agency have completely been ignored. Neither in the written report nor during course of evidence PW.5, informant had narrated that he had barred over the information regarding seizure of ganja along with apprehension of an accused to his superior officials and in likewise manner, due to non-examination of the Investigating Officer, the steps having at his end, if any is found completely blank. Apart from this, there also happens to be complete lacking at the end of the prosecution over whether sample was prepared as, none had stated that at the P.O. or at the SSB outpost sample was prepared nor there happens to be evidence with regard to sealing of the seized article though, during cross-examination PW.5 had tried to explain the same. Not only this, it is also evident that material exhibit has also not been produced before the court.

6. In ***Vijay Jain v. State of Madhya Pradesh*** reported in **(2013) 14 SCC 527** it has been held:-

“9. Para 96 of the judgment of this Court in *Noor Aga case* (2008) 16 SCC 417 on which the learned counsel for the State very strongly relies is quoted hereinbelow: (SCC p. 464)

“96. Last but not the least, physical evidence relating to three samples taken from the bulk amount of heroin was also not produced. Even if it is accepted for the sake of argument that the bulk quantity was destroyed, the samples were essential to be produced and proved as primary evidence for the purpose of establishing the fact of recovery



of heroin as envisaged under Section 52-A of the Act.”

Thus in para 96 of the judgment in *Noor Aga case* (2008) 16 SCC 417 this Court has held that the prosecution must in any case produce the samples even where the bulk quantity is said to have been destroyed. The observations of this Court in the aforesaid paragraph of the judgment do not say anything about the consequence of non-production of the contraband goods before the court in a prosecution under the NDPS Act.

10. On the other hand, on a reading of this Court's judgment in *Jitendra case* (2004) 10 SCC 562, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in *Ashok* (2011) 5 SCC 123 this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant.

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12. We are thus of the view that as the prosecution has not produced the brown sugar before the Court and has also not offered any explanation for non-production of the brown sugar alleged to have been seized from the appellants and as the evidence of the witnesses (PW 2 and PW 3) to the seizure of the materials does not establish the seizure of the brown sugar from the possession of the appellants, the judgment of the trial court convicting the appellants and the judgment of the High Court maintaining the conviction are not sustainable.”



7. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
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