

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.146 of 2016

Arising Out of P.S. Case No. -188 Year- 2011 Thana -RAXAUL District- EAST
CHAMPARAN (MOTIHARI)

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Buchi Devi @ Buchhi @ Bachi Devi, Wife of Surendra Sah, R/o
Village & P.S.-Pokharia, District-Bara (Nepal).

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

For the Appellant : Mr. Abhishek Kumar @ Sonu Babu, Adv.
Mrs. Rashmi Jha, Adv.

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 15-05-2018

The appellant/ Buchi Devi @ Buchhi @ Bachi Devi
has been convicted for the offences punishable under Sections
20(b), (ii)(C) and 23(c) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (*in short the **N.D.P.S. Act***) by judgment
dated 05.02.2016, passed by the learned 1st Additional
Sessions Judge, East Champaran at Motihari in N.D.P.S. Case
No. 143 of 2011 and by order dated 09.02.2016, she has been
sentenced to undergo rigorous imprisonment for 10 years, to
pay a fine of Rs. 1,00,000/- and in default of payment of fine,



to further suffer imprisonment for 6 months each under both the counts, *i.e.* for the offences under Sections 20(b), (ii)(C) and 23(c) of the N.D.P.S. Act. The sentences have been ordered to run concurrently.

2. From the possession of three women including the appellant, 10 kgs. of Charas was recovered. From the possession of the other two accused persons, who were put on trial along with the appellant, 6 kgs. of Charas was recovered, whereas the appellant was found to be in possession of 4 kgs. of Charas.

3. The prosecution case is based on the statement of the informant/Milap Singh (P.W. 6), who, at the relevant time, was posted as Head Constable of S.S.B. at Raxaul. He has alleged that he received an information that three women are coming from the side of Nepal with narcotic. On such information, he constituted a police team and laid a seize near Kaudihar Chauk Bus Stand. The police party saw three women coming towards India from Nepal. They were stopped and were searched. From the possession of the two other accused persons, 3 kgs. of Charas each was found. From the possession of the appellants, 4 kgs. of Charas was recovered. On further probe, the appellant and others are said to have told the informant/P.W. 6 that they were only providing courier services and got Rs. 500/- in return.



4. On the basis of the statement made by the informant/P.W. 6, Raxaul P.S. Case No. 188 of 2011, dated 28.09.2011, was registered for investigation for the offences under Sections 20, 22, 23 and 24 of the N.D.P.S. Act.

5. The police, after investigation submitted chare-sheet, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

6. The Trial Court, after examining ten witnesses on behalf of the prosecution convicted the appellant and others as aforesaid.

7. The learned counsel for the appellant, assailing the judgment and order of conviction, has submitted that the mandatory provisions of the N.D.P.S. Act, viz. Sections 42(2), 50, 52-A, 55 and 57 have been completely flouted, thereby rendering the entire trial vitiated in the eyes of law. Secondly, it has been argued that the sampling was not done at the spot. The sample was sent to the Forensic Science Laboratory after an unusual delay and the informant/P.W. 6 is said to have opened the packet and re-sealed it again. Neither the police team offered themselves for search nor were the appellant and the other accused persons made known their right to be searched in front of a gazetted officer or a superior police officer.

8. On the aforesaid grounds, it was urged that



the judgment and order of conviction be set-aside as not being in consonance with law.

9. In order to appreciate the contentions put forth on behalf of the appellant, it would first be necessary to refer to the deposition of P.W. 6, who is the informant of this case.

10. P.W. 6 (informant) has deposed before the Trial Court that on 27.09.2011, while he was posted at Siswa, he secretly learnt that three women are trying to transport narcotic substance. A police team was constituted and a seize was laid near Raxaul Bus Stand. On suspicion, three women were stopped by the police and they disclosed their names as Buchi Devi, Radhika Devi and Sunita Devi. From the possession of the appellant, 4 kgs. of Charas was recovered. 3 kgs. of Charas each is stated to have been recovered from the possession of the other two accused persons, who were put on trial along with the appellant. A seizure-list was prepared, which was signed by him as also by the Assistant Commandant (Ext.-1). He has admitted in his examination-in-chief that the appellant and two others were kept in the S.S.B. camp where relevant papers were prepared. After the medical examination of the appellant and others, they were handed to Raxaul police the next morning.

11. The aforesaid witness (P.W. 6) has admitted



that from the place of arrest, search and seizure, the Customs office is about one kilometer away. No information was given to the Custom Department about the occurrence. He has also stated that he is not trained for identification of any narcotic substance, much less Charas. All the packets which were recovered from the possession of the accused persons including the appellant were opened by him, but no identification mark was given on the same. No sample was taken from the aforesaid packets. The packets were, thereafter, sealed again. The Assistant Commandant, it has been deposed, was present during the entire process.

12. From the deposition of the aforesaid witness, it becomes apparent that the secret information which was received by him was never reduced in writing and sent to the superior police officer as mandated under Section 42(2) of the N.D.P.S. Act. That apart, it does not also appear from his deposition as to any identification mark having been put over the seized articles. The packets containing Charas were opened and then sealed again by him.

13. In such circumstances, it is difficult to believe that the packets from which the samples were obtained were the same packets which were seized by the raiding team of which the aforesaid prosecution witness was the leader.

14. What further strikes this Court is that the



accused persons including the appellant being women were kept in the police camp for the whole of the night. They have not been searched in presence of a lady police officer nor have they been informed of their rights of being searched before a gazetted officer of their choice. This also is a blatant violation of Section 50 of the N.D.P.S. Act.

15. Learned counsel for the appellant has, therefore, rightly submitted that there has been violation of the mandatory provisions contained under Sections 42(2) and 50 of the N.D.P.S. Act.

16. The manner in which the seized articles were opened and sealed, further gives an impression that a totally casual and cavalier approach was adopted by the informant/P.W. 6.

17. Syed Tarif Ahamad (P.W. 1) and Paras Ram (P.W. 2) though have supported the prosecution version, but have not stated anything to show that the provisions of the N.D.P.S. Act have been complied with. In fact, P.W. 2 has categorically stated in his cross-examination that Raxaul Bus Stand, which is located near the place of arrest and seizure, is only hundred yards from the Customs office. The packets of the narcotic were handed over to the Station House Officer, Raxaul.

18. Similar statement has been made by Vinayak



Kamojee (P.W. 3) and Sunil (P.W. 4), who too have stated that neither any gazetted officer was called or informed nor the Customs office, which was at a short distance from the place of arrest and seizure, was informed about the occurrence.

19. Jagdish Kumar (P.W. 5) has stated that he made statement before the Raxaul police on 28.09.2011. The Customs office is stated by him to be around two kilometers away from the place of arrest and seizure and about 300 – 400 yards away was the police station.

20. Bikram Baba (P.W. 7) has admitted of not writing anything in the case diary nor has he signed any paper.

21. Shankar Ram (P.W. 8) was posted as A.S.I., Raxaul at the time of the investigation of the case. He had investigated the case. He had recorded the statement of the witnesses. The seized articles were sent by him to the Forensic Science Laboratory, after obtaining the permission from the Judicial Magistrate, East Champaran, Motihari. When he received the charge of investigation, he was handed over the First Information Report, the seizure-list, the recovered narcotics and the arrested women accused persons including the appellant. The Charas was received in sealed packet, which he claims to have sent to the *Malkhana*.



22. From the statement of the Investigating Officer of this case, it further becomes apparent that no effort was also made by him to have the seized articles numbered or marked for identification. It also becomes very clear from his deposition that there were no lady Constables in the team and all the three women accused persons were searched by the police team constituting of male Constables only. The packets were opened on 22.10.2011 for drawing of the sample in presence of R.K. Bharti, Judicial Magistrate, *i.e.* after about a month of the seizure. From 22.10.2011 to 29.10.2011, the sample which was drawn was kept in the *Malkhana*. There is no statement in the deposition about the numbering of the aforesaid sample. Surprisingly, from 29.10.2011 till 04.11.2011, the sample remained in possession of S.I., Madhav Singh, which was given to him for depositing the same in the *Malkhana*.

23. Thus, it becomes apparent that neither the seized articles nor the sample were kept in manner in which it is mandated under the N.D.P.S. Act, giving rise to the suspicion that the same may have been tampered with.

24. Reyaz Ahamad (P.W. 9) though was examined in-chief, but he did not turn up for his cross-examination.

25. Thus, from the deposition of the witnesses, it



becomes apparent that the provisions contained in Sections 42(2), 50 and 52-A of the N.D.P.S. Act have not at all been complied with. The seized articles as well as the sample were kept with one Madhav Singh, who has not been examined. The sampling was done after a long delay. The appellant being a lady was not searched by a lady Constable. These facts have created a big wedge in the prosecution case, thereby making the case doubtful.

26. The N.D.P.S. Act, 1985 was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for control and regulation of operations relating to narcotic drugs and psychotropic substances.

27. It has been, times without number, held by the Apex Court that to ensure avoidance of harm to the innocent persons and abuse of the provisions by the Officers, the safeguards provided under the N.D.P.S. Act have to be observed strictly. [refer to ***State of Punjab Vs. Balbir Singh (1994) 3 SCC 299***; and ***Saiyad Mohd. Saiyad Umar Saiyad & Ors. Vs. State of Gujarat (1995) 3 SCC 610***]. Similar view has been expressed by the Constitution Bench of the Supreme Court in case of ***State of Punjab Vs. Baldev Singh (1999 (6) SCC 172***).

28. The provisions of the N.D.P.S. Act, which



have been violated in the present case, are mandatory and any non-observance of the mandatory Rules only vitiates the trial.

29. Thus, the conviction and sentence of the appellant cannot be sustained in the eyes of law.

30. For the reasons aforesaid, the judgment of conviction dated 05.02.2016 and order of sentence dated 09.02.2016, passed by the learned 1st Additional Sessions Judge, East Champaran at Motihari in N.D.P.S. Case No. 143 of 2011, arising out of Raxaul P.S. Case No. 188 of 2011, as against the appellant, is set-aside.

31. The appeal, therefore, is allowed.

32. The appellant/Buchi Devi @ Buchhi @ Bachi Devi is in custody. She is directed to be released forthwith, if not wanted in any other criminal case.

33. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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