

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.279 of 2016

Arising Out of PS.Case No. -34 Year- 2013 Thana -WEST
CHAMPARAN GRP CASE District-
WESTCHAMPARAN(BETTIAH)

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Md. Chand Son of Hira Mian @ Hira Mistri Resident of village -
Dumariya Tola, Ward No. 1, Purani Nepali Station, Hariya P.O.,
Police Station Raxaul, District - East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahendra Thakur, Advocate

For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 14-05-2018

The appellant/Md. Chand has been convicted under
Section 20(b)(11)(c) and 22 (c) of the Narcotic Drugs &
Psychotropic Substances Act, 1985 by judgment dated
09.09.2015 passed by the learned Additional District &
Sessions Judge, IV, Bettiah, West Champaran and vide order
dated 15.09.2015, he has 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
simple imprisonment for one year for each of the offences.



The appellant and co-accused Bigan Chauhan are alleged to have made attempts at transporting 4 Kgs of *Charas* and accused Bigan Chauhan was arrested by the Police Party which was constituted for the purposes of apprehending him. The implication of the appellant in this case is on the basis of the statement made by co-accused Bigan Chauhan.

On the self statement of Basudeo Rai, S.H.O, G.R.P, Narkatiaganj (P.W.2), the F.I.R was registered. He has alleged that on 02.10.2013, he received secret information that contraband article is being carried in a train which is coming from the side of Narkatiyaganj. After receiving this information, P.W. 2 waited at the railway station for the train to arrive. On the arrival of the train, one person who was carrying a bag was found to be coming out of the train bogie in a suspicious manner. He was apprehended and from his possession, eight packets, each containing 500 grams of *Charas* were recovered. On further interrogation, he disclosed that the aforesaid consignment of narcotic was given to him by the appellant who wanted it to be taken to Punjab and for which he was paid Rs. 1500/-.

On the basis of the aforesaid self statement, a case vide Narkatiyaganj P.S. Case No. 34 of 2013 dated 03.10.2013 was instituted for investigation for the offences under Sections 30(b)(11)(c), 21(a), 22, 27(A) of the Narcotic



Drugs & Psychotropic Substances Act, 1985.

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

The Trial Court, after examining eight witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant and another as aforesaid.

Mr. Mahendra Thakur, learned counsel for the appellant has submitted that the judgment and order of conviction is much too presumptuous and cannot be allowed to be sustained in the eyes of law. The appellant has not been arrested and his implication is only on the basis of the statement made by the arrested person. That apart, it has been submitted that when the appellant was arrested, nothing was recovered from his possession.

Basudeo Rai (P.W. 2) in his deposition has supported the prosecution version but has categorically stated that only Bigan Chauhan, a co-accused was arrested who disclosed that the appellant also was accompanying him but had run away on seeing the Police Party. From his possession, eight packets each containing 500 grams of *Charas* were recovered. He has admitted in his cross examination that he did not see the appellant and that even though many persons had assembled



at the place of arrest, search and seizure but nobody from the crowd was made independent witness for the aforesaid procedure of search and seizure. The arrested accused person was not informed of his right to be searched in presence of a Gazetted Officer or a superior Police Officer.

From the deposition of the aforesaid witness, it does not appear that any inventory was made at the time of search and seizure. No marking was made on the recovered article. It also does not appear from his deposition whether the packets were opened and weighed and were tested for *prima facie* coming to the conclusion that it was a narcotic. His deposition also does not throw any light whether the seized articles were kept at any place of safety where it could not have been tampered with.

Sachin Kumar, one of the members of the raiding team who has been examined as P.W. 1, has supported the prosecution version so far as co-accused Bigan Chauhan is concerned. He has also admitted in his cross examination that at the time when aforesaid Bigan Chauhan was arrested, many people had congregated at that place but none of the independent persons was made a witness to the search and seizure. The arrest, search and seizure was made at the Railway Station but even then no effort was made to call or



inform any Gazetted Officer.

Similarly Bharat Prasad Sharma, Raj Kumar Singh and Abhishek Kumar, who are constables in the Railway Police and who were examined as P.W.s 3, 4 and 5 have only supported the prosecution version so far as the arrest of co-accused Bigan Chauhan is concerned.

From the deposition of the aforesaid witnesses also, it does not appear that any inventory was made of the seized articles or any sample was drawn at the place of arrest, search and seizure. They also have not claimed to have seen the appellant at the Police Station. Even if they would have claimed to have seen the appellant, it would not have been of any consequences as the appellant was never arrested from near the railway bogie or the platform of the Railway Station.

The appellant was admittedly arrested on the same day of the lodging of the F.I.R and that also on the statement having been made by the co-accused person who was arrested. The appellant was arrested from his house from where there is no recovery.

Shyam Lal Singh (P.W. 6) and Pradeep Kumar Singh (P.W. 7) have also not stated anything which could throw any light on the implication of the appellant in this case.

Ramashish Singh (P.W.8) is the Investigating Officer



of this case. He has deposed that he was entrusted with the charge of investigation of the case. After taking over the charge, he had recorded the further statement of P.W. 2 and had visited the place of occurrence. The arrest, search and seizure were made on Platform No. 2. He has deposed that the seized narcotic was sent to F.S.L. for obtaining a report. However, in his cross examination, he has stated that the seizure list was prepared on 02.10.2013 in the night but the F.I.R was registered on 03.10.2013. He has also stated in his cross examination that he had gone to the house of the appellant where he was arrested but neither from his house nor from his personal possession, any incriminating article was recovered. He was handed over the seized item on 03.10.2013 at 12:30 in the night

Though the aforesaid witness has stated that he had sent one sample to the F.S.L but has not stated as to when and how the sample was drawn.

Thus, from the deposition of the witnesses aforesaid, it becomes very clear that none of the mandatory provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 have been complied with. Neither the secret information which was received by P.W. 2 was reduced in writing nor was it sent to the superior Police Officer, thereby breaching the mandatory provision contained in 42(2) of the Narcotic Drugs



& Psychotropic Substances Act, 1985. The provisions of Section 50, 52(A) and 57 of the N.D.P.S. Act have also been violated.

From the perusal of the records, no evidence against the appellant has surfaced except for the statement made by co-accused Bigan Chauhan who too was put on trial along with the appellant.

In the absence of any evidence with regard to the safe keeping of the seized item or drawing of the sample from the aforesaid seized article and sending it immediately to the F.S.L, no conviction under Section 20(b) 11(c) and 22 (c) of the Narcotic Drugs & Psychotropic Substances Act, 1985 can be recorded.

The appeal, therefore succeeds.

For the aforesaid reasons, the judgment and order of conviction and sentence dated 09.09.2015 and 15.09.2015 respectively passed by learned 4th Additional District & Sessions Judge, Bettiah at West Champaran in Trial No. 76 of 2013, arising out of N.D.P.S. Case No. 41 of 2013 is set aside

The appellant is acquitted of all the charges.

The appellant is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

Let a copy of this judgment be sent to the



Superintendent of concerned Jail for compliance and needful
action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19/05/2018
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