

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.39 of 2013

Arising Out of PS.Case No. -13 Year- 2008 Thana -null District- SAHARSA

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Ranjan Kumar Sah, son of Mahendra Sah, resident of Village- Kahara, P.S+
District- Saharsa. Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Adv.
Ms. Monika, Adv.

For the Respondent/s : Mr. S.A. Ahmad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 06-09-2018

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

2. This appeal has been preferred against the judgment
and order of conviction and sentence dated 21.12.2012 passed
by the 1st Additional Sessions Judge-cum-Special Judge,
Saharsa in Special Case No.13 of 2008, whereby the learned
Trial Court convicted the accused Ranjan Kumar Sah under
Section 20 (b) (ii) (A) of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (hereinafter in short referred to as the
'NDPS Act') and sentenced him to undergo R.I. for six months
and also slapped him with fine of Rs.5000/- and in case of
default of payment of fine further to undergo R.I. for one
month.

3. The factual matrix of the case is that Special Case



No.13 of 2008 was instituted u/s. 20(b) of the NDPS Act by the personnel of the Excise Department with the case in succinct that on secret information personnel of the Excise Department raided the betel shop of the accused Ranjan Kumar Sah on 20.12.2008 located in refugee colony and recovered and seized 43 big pudia each containing 1 gram, 80 small pudia each containing ½ gram, 15 cigarettes and open 150 gram ganja, total 233 gram ganja from the said shop and prepared the seizure list in presence of the witnesses and copy of seizure list was furnished to the accused.

4. The aforesaid case was investigated by the personnel of Excise Department and on conclusion of the investigation and finding the case true, the Excise Department furnished the prosecution report under Section 20 (b) of the NDPS Act against the aforesaid accused.

5. On receiving the prosecution report along with the seizure list and perusing the same, the learned Trial Court took cognizance of the offence under Section 20 (b) of the NDPS Act against the accused.

6. Charge against the accused was framed under Sections Section 20 (b) of the NDPS Act. Charge was read over and explained to the accused to which he pleaded not guilty and



claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has been able to examine altogether four prosecution witnesses, namely, Excise Constable Arun Kumar Sharma as PW-1, Excise Constable Lal Babu Mishra as PW-2, A.S.I. Excise Pramod Kumar Srivastava as PW-3 and S.I. Excise Binit Prasad as PW-4. In documentary evidence, the prosecution has filed and proved certain documents.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The defence has neither adduced any ocular nor documentary evidence in buttress of its case.

9. After hearing the parties and perusing the record, the learned Trial Court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or



not.

12. It is submitted by the learned counsel for the appellant that all the witnesses examined by the prosecution happen to be official witnesses and there is no independent witness of the occurrence. Even there is no independent witness of the search and seizure of alleged contraband from the possession of the appellant rather the witnesses happen to be official witnesses, hence there is violation of provision of search & seizure. It is further submitted that the alleged contraband is said to be weighing 233 grams but the same was not weighed at the place of occurrence rather the raiding party has mentioned the weight of the aforesaid contraband merely on guessing. It is further submitted that the aforesaid contraband was not sent to F.S.L. for its chemical examination. Hence, for want of chemical examination, the seized article cannot be said to be Ganja. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy, reliable ocular and documentary evidence.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the learned Trial Court



correctly appreciating the facts of the case and evidence on record has rightly passed the impugned judgment and order of conviction and sentence, and the same is liable to be sustained and this appeal is shorn of merits and is liable to be dismissed.

14. As per section 42 of the NDPS Act on getting information regarding keeping of contraband by an accused at his shop etc. The concerned officer shall note down the aforesaid information in writing and send a copy thereof to his immediate superior official within seventy two hours. But from perusal of the prosecution case, it appears that on getting secret information about keeping Ganja by the appellants in his betel shop the informant raided his shop with the Excise personnel but there is nothing on record to show that on receiving the secret information informant had noted down the same in writing and sent such information to his immediate superior officer within the aforesaid stipulated period. Thus, there appears to be utter violation of Section 42 of the NDPS Act.

15. From perusal of record, it further appears that all the witnesses examined by the prosecution happen to be official witnesses and the personnel of the Excise Department. From perusal of the seizure list, it appears that there is no independent witness of the seizure rather all the witnesses of seizure also



happen to be official witnesses. None of the witnesses examined by the prosecution has stated that before making search of the shop of the appellant, members of the raiding party gave their search to each other and after completing the aforesaid formality they conducted the search and recovered the aforesaid contraband from the shop of the appellant.

16. Though PW-2 who happens to be member of the raiding party has stated in para-3 of his cross-examination that there were several persons present at the place of occurrence at the time of occurrence but they refused to put their signatures on the seizure list but PWs-1, 3 and 4 who also happen to be the members of the raiding party have not corroborated the aforesaid statement of PW-2 rather PW-1 has stated in para-3 of his cross-examination that though locals were present at the place of occurrence at the time of occurrence but he did not obtain their signatures on the seizure list. In view of the aforesaid ocular evidence of the prosecution, it appears that at the time to seizure of aforesaid contraband from the place of occurrence, locals were present there but the signature of no independent witness was obtained on the seizure list and accordingly the said search and seizure was not made in front of the independent witnesses. In view of aforesaid facts and



circumstances the search and seizure does not appear to have been conducted as per provisions of law rather in utter violation of provision of search and seizure and said seizure list is nothing but a document written by the concerned Excise personnel.

17. From perusal of record, it appears that the aforesaid seized contraband was not sealed at the place of occurrence by the seizing authority. Though PW-3 has stated in para-2 of his cross-examination that the aforesaid contraband was sealed before him and PW-4 in para-3 of his examination-in-chief has stated that the material exhibit was deposited in Malkhana after sealing the same but neither PW-3 nor PW-4 has stated that the aforesaid contraband was sealed at the time and place of occurrence. Moreover, other two witnesses who happen to be the members of the raiding party have not whispered about sealing of the said contraband at the place occurrence by the seizing authority. Thus, there appears to be utter violation of Section 55 of the NDPS Act.

18. Offence punishable under the NDPS Act and punishment provided therefore is very stringent and stern, so the strict provisions have been provided in the said Act. So that there may not be chance of false implication. In such view of



the matter, the compliance of the provision which are mandatory in nature has to be considered seriously and non-compliance of such requirement will give rise to grave doubt.

19. Section 55 of the NDPS Act provides it as a mandatory requirement that after search and seizure, the seized article will be sealed by the officer, who seized it and concerned Officer-in-Charge of the police station will take charge of the seized article. Section 55 of the NDPS Act further provides that in case sample of seized narcotic article is taken then the same will be sealed by person seizing it and the officer-in-Charge of the police station taking charge of the seized article. Thus, the basis and mandatory requirement of sealing of the article in view of provision of Section 55 of the NDPS Act has not been proved. The time of sealing of the article has also not been proved. Since any sealing of the article at the time of seizure has not been proved nor any exact date and time has been proved in taking of the sample by the seizing authority it gives rise to grave doubt. Hence, the appellant is entitled to benefit of doubt.

20. The Malkhana in-charge has also not been examined by the prosecution to prove that the seized Ganja was kept in Malkhana intact and in safe custody. Thus, there is no material



on record to establish that the seized Ganja was kept in safe custody.

21. There is no evidence on the record and moreover none of the witnesses examined by the prosecution has stated that at the time of seizure and sealing of the seized contraband the sample of the said seized contraband was procured and sealed and was sent to FSL for its chemical examination rather PW-4 has candidly stated in para-6 of his cross-examination that the seized article was not got examined by the FSL as he has got training for identification of the Ganja at the PTC, Hazaribagh but no such training certificate has been brought on record indicating the getting of training by him for identification of Ganja. Moreover, in para-7 of his cross-examination he himself has stated that on chemical examination it is ascertained as to whether the contraband is Ganja or Bhang. Thus, it appears that the seized contraband was not sent to the FSL for its chemical examination and for want of any chemical examination it can not be decisively inferred that the seized contraband is Ganja.

22. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts



by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned Trial Court is set aside and the appellant is acquitted from the charge levelled against him giving him benefit of doubt. As the appellant is on bail, he is discharged from the liability of his bail bond. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	11.09.2018
Transmission Date	11.09.2018

