

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.475 of 2015

Arising Out of PS.Case No. -56 Year- 2005 Thana -ALAMNAGAR District- MADHEPURA

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Amod Mandal Son of Fekan Mandal Resident of Mauza Nauwagarhi, Police Station
Nauwagarhi, District Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Vivekanand Singh, Adv.

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 06-04-2018

Appellant, Amod Mandal has been found guilty for an offence punishable under Section 20(b) of the NDPS Act and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo R.I. for one year additionally, under Section 414 of the IPC and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.1000/- and in default thereof, to undergo R.I. for one month, additionally, with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial be set off in accordance with Section 428 of the Cr.P.C by the Addl. Sessions Judge cum Special Judge, NDPS, Madhepura vide judgment of conviction dated 30.06.2015 and order of sentence dated 01.07.2015 with regard to Alam Nagar P.S. Case No.56/2015, G.R. No.68/2015.

2. S.I., Rabindra Prasad Sinha (PW.5) recorded his self statement divulging the fact that during course of patrolling on 14-09-2005 at about 06:30 PM, they saw two persons moving over



Rajdoot motorcycle in suspected manner whereupon singled to stop but, instead of obeying the same, tried to speed away the motorcycle accordingly were intercepted, apprehended and in presence of Bablu as well as Vyas they were physically searched, nothing was found on the search of the motorcycle, 1.5 Kg. Ganja was found duly wrapped from its dicky and for that search cum seizure list was prepared.

3. After registration of Alam Nagar P.S. Case No. 56/2005 investigation was taken up and after concluding the same, charge sheet was submitted which happens to be the basis for trial, meeting with the ultimate result, subject matter of instant appeal.

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

5. In order to substantiate its case, prosecution had examined altogether 12 PWs, who are PW.1-Suleman Ali, PW.2-Sheikh Jabbar, PW.3-Bindeshwari Yadav, PW.4-Vyas Ram, PW.5-Ravindra Pd. Sinha, PW.6-Drub Pandey, PW.7-Naresh Paswan, PW.8-Bhagwat Sharma, PW.9-Bouku Mandal, PW.10-Sanjay Kumar Yadav, PW.11-Bijendra Yadav, PW.12-Himanshu Pandey. Side by side had also exhibited Ext.1-Signature of Vyas Ram, Ext.2-Seizure list, Ext.3-Fardbeyan, Ext.4-Formal FIR, Ext.5-Charge sheet, Ext.6-Letter No.103 dated 21.1.2009 of the office of FSL Patna, Ext.6/1-FSL Report.

6. From perusal of the lower court record, it is apparent that in spite of giving sermons to the prosecuting agency times



without number that Investigating Officer should be properly trained how to conduct investigation the offences relating to the NDPS Act, how to prepare sample, sealing of the sample, production of the seized articles in court, have been of no avail and that happens to be reason behind that in spite of initial prosecution version showing recovery of narcotic in huge quantity, the mistakes committed at the end of prosecution ultimately let acquittal of the accused. This case happens to be one of the glaring example. From the evidence of the PW.8 whatever been gathered is that neither sample was prepared, nor it was sealed at the spot, nay it was produced before the court. Although from the evidence of the Investigating Officer, PW.12 it is evident that seized article were kept in Malkhana. Apart from this, it is also evident that neither the informant PW.5 during course of his evidence had narrated with regard to preparation of sample, deposit of the seized article at Malkhana, nor the Investigating Officer PW.12 had deposed the manner wherein sample was prepared. From exhibit 6/1 which happens to be the FSL report, it simply suggests that while paper packet without sealed, signature was sent for examination. Further, after minute observation of the same, it is evident that same was transmitted vide letter no.858 dated 09.11.2005 while it was received at the office of the FSL on 22.11.2005 and the prosecution could not be able to suggest where the aforesaid samples were during the intervening period. So far status of other witnesses are concern, less said is better.

7. In *Vijay Jain v. State of Madhya Pradesh* as 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.”

8. That being so, the judgment of conviction and sentence 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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