

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.582 of 2016

Arising Out of PS.Case No. -46 Year- 2012 Thana -SANJHAULI District-
SASARAM (ROHTAS)

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Kashi Singh, Son of Ramadhar Singh, resident of Village- Amadar
Tola, Gangajal Math, P.S.- Sanjhauli, District- Rohtas at Sasaram.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Union of India through the Intelligence Officer, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikram Deo Singh, Adv.

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 28-03-2018

The appellant/Kashi Singh has been convicted under Sections 8(c) and 20(ii)(B)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "the N.D.P.S. Act"*) by judgment and order of conviction dated 20th July, 2016, passed by the learned 4th Additional Sessions Judge, Rohtas at Sasaram in N.D.P.S. (Sanjhauli) P.S. Case No. 46 of 2012 and has been sentenced to undergo rigorous imprisonment for 10 years for the aforesaid offences, to pay a fine of Rs. 1,00,000/- and in default of payment of



fine, to further suffer simple imprisonment for 3 months.

2. From the house of the appellant/Kashi Singh, 3 quintals and 25 kilograms of Ganja is said to have been recovered.

3. A self-statement was lodged by Manager Ram (P.W. 7) on 25.08.2012, alleging that he had received a secret information that the appellant is indulging in sale and purchase of narcotics in huge quantity. He recorded the aforesaid information in the station diary and, thereafter, informed the Circle Officer, Sanjhauli and requested him to accompany the police party for raid and recovery of narcotics. The house of the appellant was raided. One person came out to the house and ran away. The informant (P.W. 7) was informed that the person who had run away was the appellant. From the house of the appellant, 3 quintals and 25 kilograms of Ganja kept in several packets were recovered. The same was seized in presence of two independent witnesses, viz. Sri Niwash Prasad (P.W. 2) and Surendra Prasad (P.W. 3).

4. On the basis of the aforesaid self-statement, a case *vide* Sanjhauli P.S. Case No. 46 of 2012, dated 25.08.2012, was instituted for investigation for the offences under Sections 20 and 21 of the N.D.P.S. Act.

5. The police, after investigation submitted charge-sheet, whereupon cognizance was taken and the



appellant was tried.

6. The learned Trial Court, after examining 8 witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as aforesaid.

7. Mr. Vikram Deo Singh, learned Advocate appearing for the appellant, while assailing the judgment and order of conviction, submitted that the mandatory provision of Section 42(2) of the N.D.P.S. Act has not been complied with, rendering the conviction and sentence of the appellant bad in the eyes of law. He has further submitted that one of the members of the raiding team has investigated this case, which is not permissible under law and the case of the prosecution stands vitiated on that score alone. The other arguments on behalf of the appellant are that there is no evidence on record to conclusively prove that the narcotics was weighed at the place of raid or that any sample was drawn from the aforesaid recovered narcotics at the place of raid. No effort has also been made by the prosecution to establish and prove that the place from where the narcotics was recovered belonged to the appellant. Finally, it has been contended that the recovery was allegedly made on 25.08.2012, but application for sending the sample to the Forensic Science Laboratory (*in short "the F.S.L."*) was obtained on 28.09.2012 and the same was sent



to the F.S.L. on 29.10.2012, *i.e.* after a delay of about one month in making an application before the Special Court, seeking permission to send the samples for examination and that delay being left totally unexplained.

8. From the deposition of Amrendra Kumar (P.W. 1), who at the relevant time was posted as the Circle Officer, Sanjhauli, it appears that he (P.W. 1) had accompanied the police party on the request of P.W. 7 (informant) and had gone to village-Gangajal Math. Seeing the police party, it has been deposed by him, one person came out of the house and ran away. He, therefore, could not identify the appellant. In a general manner, the aforesaid witness has stated that from the house of the appellant, 3 quintals and 25 kilograms of Ganja was recovered, which was stored in 6 big sacks and 250 small plastic packets. The seizure list was prepared in his presence on which he had put his signature (Ext.-1).

9. P.W. 1 has not stated as to how the narcotics was weighed. He has also not spoken about any sample having been drawn at the place of raid. With respect to the identification of the house to be that of the appellant, there is no statement by P.W. 1. He has only deposed that from the house of the appellant, narcotics was recovered.

10. True it is that P.W. 1 is the Circle Officer/Magistrate, but his evidence is absolutely lacking in



material particulars with respect to the weighment of the narcotics and drawing of samples from the packets and sacks in which the narcotics was stored. From which place in the house, the narcotics was recovered is also not stated by P.W.

1. There is no statement regarding the occupancy of the house in question.

11. The evidence of P.W. 1, seen in the background of the deposition of Srinivash Prasad and Surendra Prasad, who have been examined as P.Ws. 2 and 3 respectively and who are independent persons who were made witnesses to the search and seizure, it would appear that nothing was recovered from the house in question.

12. Srinivash Prasad (P.W. 2) has sated that nothing was recovered in his presence. Though he has identified his signature on the seizure list (Ext.-1/1), but has clearly stated that he had not made any statement before the police. In his cross-examination, he has admitted that the Officer-In-Charge/Investigating Officer made him sign on a blank piece of paper. He claimed to be absolutely ignorant about the occurrence.

13. Similarly, Surendra Prasad (P.W. 3) has also stated that he never made any statement before the police. He has also identified his signature (Ext.-1), but has admitted that the signature from him was obtained by the police on a



blank sheet of paper.

14. Thus, from the evidence of P.Ws. 1, 2 and 3, neither could it be established beyond doubt that the place where the raid was conducted belonged to the appellant or that anything was recovered from the house which was raided. So far as P.W. 1 is concerned, he was only informed that the person who had run away from the house was the appellant.

15. Mahesh Prasad (P.W. 4) was one of the members of the raiding team. He has deposed that he along with the police party had gone to village-Gangajal Math and the police had surrounded the house of the appellant. The Circle Officer, Officer-In-Charge, Chowkidar and about 3 - 4 persons of the village entered the house from where Ganja was recovered. He has also stated that the said narcotics was loaded on a vehicle and was brought to a rice-mill. On weighing, the narcotics was found to be weighing 3 quintals and 25 kilograms. Nobody had been arrested at the time of raid. People had informed that the person who managed to run away from the house, on seeing the police party, was none else but the appellant. He did not identify the appellant in dock. He has also candidly admitted that he had not entered the house of the appellant and had remained outside. The other police personnel were also standing outside the house.



16. The deposition of P.W. 4 does not throw any light on the identification of the house in question to be that of the appellant.

17. Curiously and in a way differently, P.W. 4 has stated that the weight of the narcotics was taken in the rice-mill and not at the place of raid, as has been stated by the informant of this case (P.W. 7) in his deposition before the learned Trial Court.

18. Bijendra Kumar Giri (P.W. 5) was also one of the members of the raiding team, who has admitted that nobody was arrested at the time of raid. Who had run away from the house where the raid was conducted was also not known to him. In fact, it has been stated by him that it could not be ascertained as to who had run away from the house. Thereafter, the raiding team went to the police station. P.W. 5 also did not identify the appellant in the dock. No paper was prepared in his presence and no packet of the narcotics was opened in his presence. He did not even know as to who/which members of the raiding party had entered the house where the raid was conducted.

19. From the deposition of the aforesaid witness, even the identification of the appellant could not be established. According to him, it could not be ascertained by anybody that the person who had run away was the appellant



only. Since no packet was opened in his presence, as admitted by him in his deposition, it becomes very evident that the sampling was not done at the place of raid.

20. Narendra Prasad (P.W. 6) is the Investigating Officer of this case. He has admitted to be part of the raiding team, but has still investigated the case. He did not even tell the informant of this case (P.W. 7) that it was not proper for him to have investigated the case when he had been part of the raiding team. With regard to the identification of the house to be that of the appellant, he has stated that he was informed by two independent witnesses, viz. P.Ws. 2 and 3 about the house belonging to the appellant.

21. Be it noted that the aforesaid two independent persons have not supported the prosecution version and have categorically stated that nothing was recovered in their presence.

22. The narcotics was stated to have weighed at the place where the recovery was made. But this part of the evidence of P.W. 6 does not appear to be trustworthy for he has not stated as to who provided the wherewithals for weighing such huge quantity of narcotics. Normally, when the police party is informed about the presence of huge quantity of narcotic, preparations are made for taking the measurement in the vehicle on which the raiding team



proceeds to the place of occurrence. He has also stated that the appellant could not be arrested; rather he, of his own, surrendered before the Court. No effort was made by P.W. 6 to know about the financial worth of the appellant. Whatever was told to him by the independent witnesses, he believed in the aforesaid statements.

23. What has caught the attention of this Court is that this witness (P.W. 6) has clearly stated in paragraph-3 of his cross-examination that the narcotics was never weighed and it was only a rough assessment of the weight of the narcotics on seeing the packets and the sacks in which it was stored.

24. Thus, the evidence with respect to weighing of the narcotics is absolutely discrepant and different versions have come through different witnesses.

25. The application seeking permission from the Special Court for sending the narcotics for examination to FSL was made on 28.09.2012 and the samples were sent only on 29.10.2012. There is no statement as to when samples were drawn and where was the entire recovered narcotics kept. A general statement has been given by this witness that the narcotics was kept in the *Malkhana*. Neither any Constable has been examined to establish that the recovered narcotics was taken from the place of occurrence or from the rice-mill



where it was taken (as deposed by one of the witness) to the *Malkhana* nor the moharrir of the *Malkhana* has been examined to testify the aforesaid assertion of P.W. 6. No register of *Malkhana* has also been brought on record/proved to establish that the narcotics was kept in the *Malkhana*.

26. This Court does not have the advantage of any destruction report also to know as to what happened to such huge quantity of narcotics.

27. The informant/Manager Ram (P.W. 7) has also admitted that the Investigating Officer was part of the raiding team. He, in paragraph-2 of his cross-examination, has clearly deposed that he did not inquire about the houses in the neighbourhood of the house of the appellant. He was not in a position to tell the Trial Court as to how many rooms were there in the house from where the narcotics was recovered. He did not find anybody present in the house. Apart from the narcotics, there was no other material available in the house which could be said to belong to the appellant or of anybody else.

28. This also raises doubt about the house being of the appellant. Had it being a dwelling house, there would surely have been some articles belonging to the occupant of that house.

29. Thus, from a conspectus of the evidence on



record, what comes to the fore is that it could not be established beyond doubt that the place from where the narcotics was recovered was that of the appellant. That apart, there is no evidence of weighing of the recovered narcotics or drawing of samples at the time and place of raid. Where the narcotics was kept before the samples were drawn and sent for examination is also not known. The independent persons, examined at the trial have not been declared hostile and therefore their evidence has to be taken into account for establishing or disproving the case.

30. That apart, merely by asking the Circle Officer to accompany the raiding team would not be sufficient compliance of Section 42(2) of the N.D.P.S. Act. The requirement of law is that the secret information received by the informant ought to have been reduced in writing and dispatched to the superior officer within a period of 76 hours. Admittedly, this requirement has not been fulfilled. The samples were not drawn at the place of raid and there has been an unreasonable delay in sending the same to the FSL. In that event, even the report of the FSL (Ext.-2) is of no consequence for bringing home the charges under the N.D.P.S. Act against the appellant. There is no way in which the evidence could be forged into one integral whole, pointing unerringly towards the guilt of the appellant.



28. Finding such big wedges and chinks in the prosecution version, this court has no option, but to set-aside the judgment and order of conviction and set the appellant/Kashi Singh at liberty.

29. The appeal succeeds.

30. The appellant/Kashi Singh is in custody. He is directed to be released forthwith, if not wanted in any other criminal case.

31. 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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