

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1315 of 2017

Arising Out of PS.Case No. -8 Year- 2009 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

[Against judgment of conviction and order of sentence dated
22.02.2017 and 23.02.2017 respectively passed by the 8th Additional
Sessions Judge, Muzaffarpur, in Trial No.07 of 2017 arising out of
DRI Case No.08 of 2009]

=====

Shivam Gaud, son of Jai Ram Gaud, resident of village- Goriyana Tola, Ashram
Road, P.O.+ P.S. Narwal, District- Kanpur (U.P.).

.... Appellant/s

Versus

The Union of India (D. R. I.)

.... Respondent/s

With

=====

Criminal Appeal (SJ) No. 1326 of 2017

Arising Out of PS.Case No. -8 Year- 2009 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

[Against judgment of conviction and order of sentence dated
22.02.2017 and 23.02.2017 respectively passed by the 8th Additional
Sessions Judge, Muzaffarpur, in Trial No.07 of 2017 arising out of
DRI Case No.08 of 2009]

=====

Bhagwati Prasad Agnihotri, son of Tej Narayan Agnihotri, resident of village +
P.O.- Duwari, P.S.- Gajner, District- Kanpur (U.P.).

.... Appellant/s

Versus

The Union of India (D. R. I.)

.... Respondent/s

=====

Appearance :

(In CR. APP (SJ) No.1315 of 2017)

For the Appellant/s : Mr. Nachiketa Jha, Advocate

For the Respondent/s : Mr. Ram Anurag Singh, CGC

(In CR. APP (SJ) No.1326 of 2017)

For the Appellant/s : Mr. Nachiketa Jha, Advocate

For the Respondent/s : Mr. Ram Anurag Singh, CGC

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA



CAV JUDGMENT

Date: 11-05-2018

By judgment of conviction and order of sentence dated 22.02.2017 and 23.02.2017 respectively passed by the 8th Additional Sessions Judge, Muzaffarpur, in Trial No.07 of 2017 arising out of DRI Case No.08 of 2009, both the Appellants have been convicted for the offence under Section(s) 20 (b)(II)(C), 23, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for ten years with fine of Rs. One lac under each Section(s) separately. In default of payment of fine, the Appellants have to further undergo rigorous imprisonment for two years. All the sentences were ordered to run concurrently.

2. Prosecution case is that one Shivendra Satyarthi, was posted as Intelligence Officer at Muzaffarpur. On 22.06.2009, he received confidential information from Patna DRI Office and a team was constituted under the leadership of L. G. Kaskar, Senior Intelligence Officer, Patna. One Truck bearing registration No. UP 78 BT 3149 was going to Shasha Musa through Tamkohi at 7.00 PM, which was stopped 2 KM before Sasamusa. The Truck Driver, Bhagwati Prasad Agnihotri stated that nothing has been loaded on the truck. Three cartons were recovered from the Truck in presence of two independent witnesses, which was found to be brown colored



material. Thereafter, the Truck along with Driver and *Khalasi* were brought at Muzaffarpur DRI Office. The Truck was thoroughly checked and 56 packets deep brown coloured article like *Charas* were found weighing 54 Kg. market value of which was Rs.16,20,000/-. Rs.1,28,000/- was also recovered from the Cabin of the Truck. Licence of the Driver and the Paper of the Truck were also found. The accused were prosecuted for the offence under the Narcotic Drugs and Psychotropic Substances Act. They confessed their guilt before the Informant. They told that seized *Charas* belongs to Deepak Jaiswal alias Deepchand and gave his mobile number and the same was to be delivered in Kanpur to the person whose mobile number was also given by the accused persons. They also told that Mani Mishra of Nepal is also involved in this act. The accused apprehended by the Informant also told that amount of Rs.1,28,000/- belongs to Sri Raju and Sri Basant of Gopalganj, which was sale proceeds of potato and onion, but no paper was submitted in favour of the same. The accused also told that owner of the Truck is Afzal Ahmad of Kanpur. He has purchased the Truck from Md. Hassan, about six months back. *Panchnama* was prepared. *Charas* as well as cash recovered from the Truck were seized under Section 43 of the Narcotic Drugs and Psychotropic Substances Act and confessional statement of both the accused was



recorded in presence of the witnesses. Three samples of 25 gr. each were prepared. 1st sample was sent for chemical examination to Chemical Examiner, Custom House, Kolkata. Chemical examination report was received confirming the seized articles to be *Charas*. Chemical examination report has been annexed with the Complaint Petition. 2nd sample of the seized article was sent to Chemical Examiner CRC Laboratory, Pusa, New Delhi. Report was received from the Chemical Examiner CRC Laboratory, Pusa, and the article was found to be *Charas*. 2nd report has also been enclosed with the Complaint Petition. Md. Hassan and Afzal Ahmad were directed by the DRI Office, Muzaffarpur, to remain present, but they did not appear. Assistant Director, Zonal Office, Lucknow, was requested to verify the address given by the Appellant, Bhagwati Prasad Agnihotri, and also the address of another accused as well as Driving Licence of the Driver. Aforesaid report was enclosed as Annexure-III with the Complaint Petition. An application was filed before the District & Sessions Judge, Muzaffarpur, for further interrogation of the accused persons. After obtaining the order, Officers of DRI recorded statement of Shivam Gaud in Muzaffarpur Central Jail on 12.08.2009 under Section 67 of the Narcotic Drugs and Psychotropic Substances Act. DRI Office, Lucknow, was requested to verify the address of Shivam Gaud, which was received



and has been enclosed as Annexure-IV with the Complaint Petition. Shivam Gaud had told wrong name of his father. After investigation, both the accused, Bhagwati Prasad Agnihotri and Shivam Gaud were found guilty for smuggling of *Charas*. Their statement under Section 67 of the Narcotic Drugs and Psychotropic Substances Act was recorded. Thereafter, complaint was filed before the Court. Cognizance was taken. Charge has been framed against the accused for the offence under Section(s) 20(b) (II) (c), 23, 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act. The Court below after trial convicted both the accused by the impugned judgment, which is under challenge in this appeal.

3. During trial, the prosecution has examined five witnesses.

4. Shivendra Satyarthi, PW 2, is the Informant/ Complainant of the case. He was posted as Intelligence Officer in DRI, Muzaffarpur on 22.06.2009. He was directed by the DRI Officer, Patna, on 22.06.2009 to be ready at 6.00 AM since confidential information was received from Lucknow and a team has been constituted. At 7.00AM, they intercepted Truck bearing registration No. UP 78 BT 3149 coming from Gopalganj. Driver and *Khalasi* of the said Truck disclosed their name as Bhagwati Prasad Agnihotri and Shivam Gaud. Truck was searched in



presence of witnesses. Three cartons were recovered with materials like *Charas*. Total 56 packets of *Charas* were recovered in three cartons weighing 54 Kg. Driver and *Khalasi* could not give valid paper of those seized articles. One bag was also seized from their possession, which contained an amount of Rs.1,28,000/-. Seizure list was prepared and the accused as well as independent witnesses, Ravi Kumar and Sintu Kumar, put their signatures. *Panchnama* of the seized article was prepared on 23.06.2009. The accused persons and the independent witnesses put their signature on the *Panchnama*. Seizure list and *Panchnama* have been marked as Ext.1 and 2 respectively during trial. Three samples were prepared from the seized article and were sealed after obtaining signature of the witnesses and the accused. Two samples were sent for chemical examination to Custom Division, Calcutta Chemical Lab and CRCB, Delhi, Pusa, respectively after obtaining order of the Court. Third sample was deposited in the Court. Statement of Bhagwati Prasad Agnihotri and Shivam Gaud were recorded. Test reports were received and the articles seized were found to be *Charas*. Test report has been marked as Ext.4 and 4/1. Certification of the seized *Charas* was done on 11.09.2004. Attested copy of certification was produced by the Informant during evidence, which bears signature of the DRI Superintendent, Customs, and Sri Jyoti Prakash, Judicial



Magistrate, 1st class. Aforesaid certification has been marked as Ext.5. *Charas* was destroyed after order of the Court on 28.01.2001. Destruction was made after obtaining order of the Court and in presence of members of the Committee. Destruction Chart has been produced during evidence, which has been marked as Ext.6. Shivam Gaud had told his wrong address. He was further interrogated after taking permission from the Court.

In cross-examination, this witness has stated that three separate samples were prepared in the packet. Samples were taken from all the 56 packets seized from the Truck.

5. Anil Kumar Sharma, PW 1, has stated that he was posted as Information Officer in DRI Muzaffarpur, on 23.06.2009. DRI Officers had apprehended one truck bearing registration No. UP 78 BT 3149 on 22.06.2009. He has gone to DRI Office in the morning of 23.06.2009. The Officers of DRI have arrested Driver and *Khalasi* of truck bearing registration No. UP 78 BT 3149. *Charas* was recovered from the aforesaid Truck. The Driver and *Khalasi* could not produce valid paper of the seized articles. The seized *Charas* weighed 54 kg. Cash amount of Rs.1,28,000/- was also recovered from the Cabin of the Truck. Three samples of the seized articles each of 25 grms. were prepared which bear signature of the Seizing Authority, Shivendra Satyarthi, as well as Driver and



Khalasi along with independent witnesses. Statement of Driver and *Khalasi* were recorded. They confessed their guilt.

In cross-examination, this witness has stated that he was not present at the time of seizure of the truck. Seizure list was prepared in his presence.

6. Babu Lal Paswan, PW 3, was posted in DRI Muzaffapur. He has stated in his evidence that members of DRI Team, Patna, and DRI Muzaffarpur of which he was also a party had apprehended one Truck two kilometer before Shasha Musa NH Road, which was going from Shasha Musa to Tamkohi Border with registration No. UP 78 BT 3149. The Driver of the Truck said that there is nothing in the Truck. Driver and *Khalasi* of the Truck disclosed their name as Bhagwati Prasad Agnihotri and Shivam Gaud. Truck was seized in presence of independent witnesses and the accused. Three cartons were recovered from the said Truck in which *Charas* were found. There were 56 packets of *Charas* recovered from the Truck. One black bag was recovered from the Cabin of the Truck, which contained Rs.1,28,000/-. The Truck and the seized articles along with accused were brought to DRI Muzaffarpur. Weight of the *Charas* was taken and the same was found 54 Kg. *Charas* was seized. Seizure list and *Panchnama* was prepared. Statement of both accused was recorded. They confessed



their guilt. Seizure list was prepared on 23.06.2009. Samples were prepared in three separate envelopes. He was present during inspection of Truck and the entire seizure procedure. Three samples of 25 grms. each were prepared in a packet.

In cross-examination, this witness has stated that independent witness was present at the time of seizure of *Charas*.

7. Har Govind Laskar, PW 4, was posted as Sr. Intelligence Officer, DRI, in Central Excise and Customs Office, Patna. He got direction from higher Officer on 21.06.2009 and reached Gopalganj along with DRI Muzaffarpur on 22.06.2009. Other members of the team were Shivendar Satyarthi, Babu Lal Paswan. Intelligence Officer of Gorakhpur DRI Office also joined his team which received information at 7.00 PM that Truck bearing registration No. UP 78 BT 3149 is going from Gopalganj to Tamkohi. Truck was stopped after giving signal. Driver and *Khalasi* of the Truck disclosed their names as Bhagwati Prasad Agnihotri and Shivam Gaud. Driver told that nothing is loaded on the Truck. The Truck was searched on the basis of confidential information. Three cartons were recovered from the Truck which contained *Charas* like article. The Truck along with Driver and *Khalasi* were brought to DRI Office, Muzaffarpur. Seized articles were weighed, which came to 54 Kg. *Charas* were kept in 56 Polythene bags. One



black coloured bag was recovered containing Rs.1,28,000/-. Accused could not give reply or produce the document with regard to seized *Charas* and cash. Statement of both the accused was recorded by Shivam Satyarthi in his presence. They confessed their guilt. He admitted of taking *Charas* from Gopalganj to Kanpur. *Panchnama* was prepared in his presence. Seizure list was also prepared with regard to seizure of *Charas*, Cash and Truck. Three samples of 56 packets were taken from the seized *Charas*. Accused persons were arrested.

In cross-examination, this witness has stated that Truck was seized on 22.06.2009 at 7.00 PM. Thereafter, Truck was brought to DRI Office, Muzaffarpur at about 2-2.30 PM. Both accused and the witnesses also came to the Office. Seizure list was prepared on 23.06.2009 at 6.00 AM in the morning.

8. Raghunandan Kumar, PW 5, was posted as Custom Inspector, Muzaffarpur Division, on the date of his evidence in the Court. He has stated in his evidence that he is posted as Godown In-charge in Muzaffarpur Custom Division. He has come to give evidence after receiving letter from the DRI Office. He has filed different papers related with the case at the time of his evidence. He has filed original Godown Entry Register, original paper of certification of seized *Charas*, original paper of



certification of seized Truck (Registration No. UP 78 BT 3149), original paper of destruction of seized *Charas*, which have been marked as Ext.8, 9, 10 and 11.

In cross-examination, this witness has stated that he was not posted in Muzaffarpur Division when these items were deposited in the Godown. He has taken charge of Godown on 14th May, 2014. He has further stated that as per Register, 52.925 Kg. *Charas* was deposited in the Godown.

9. Counsel for the Appellants has submitted that no seizure list witness has been examined during trial. Accused persons were not produced before the Magistrate or superior Officer at the time of enquiry. No seizure procedure has been complied during enquiry. Driver had no knowledge about the articles kept in the Truck. Confessional statement of Driver and *Khalasi* are not voluntary. No independent witness has been produced in the case.

10. Counsel for the Union of India has submitted that Truck was inspected on the basis of confidential information of members of DRI Team of Muzaffarpur, Gorakhpur and Patna with assistance of DRI Office, Lucknow, at Shasha Musa Tamkohi Road. Both these Appellants were Driver and *Khalasi* of the aforesaid Truck. The accused persons could not produce any document in support of the seized articles. Confessional statement of the accused



persons was recorded before the Officers of Customs Department. Members of the raiding team have all supported the case. Seized articles were found to be *Charas* as per Chemical Examiner Report.

11. Section 42 of the Narcotic Drugs and Psychotropic Substances Act gives power of valid search without warrant or authorization. Section 42 of the Narcotic Drugs and Psychotropic Substances Act is quoted below:

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other Article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other Article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place,



may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other Article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other Article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V A of this Act; and

(d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances, granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under Sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”



12. It is well established that search and seizure are essential steps in the armoury of an investigator in the investigation of a criminal case. The Code of Criminal Procedure in various provisions, particularly, Sections 96 to 103 and Section 165 recognize the necessity and usefulness of search and seizure during the investigation. Sub-section (1) of Section 41 of the Act provides that a Metropolitan Magistrate or a Magistrate of the First Class or any Magistrate of Second Class specially empowered by the State Government may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter-IV. Sub-section (2) of Section 41 refers to issue of authorization for similar purposes by Officers of Departments of Central Excise, Narcotics, Customs, Revenue Intelligence etc.

13. Sub-section (1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter-IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building, etc., he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The proviso to sub-section (1) of



section 42 lays down that if the empowered officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief.

14. Section 43 of the Narcotic Drugs and Psychotropic Substances Act deals with the power of seizure and arrest of the suspect in a public place. Section 43 of the Narcotic Drugs and Psychotropic Substances Act is quoted below:

“43. Power of seizure and arrest in public place.— Any Officer of any of the departments mentioned in Section 42 may—

- (a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter-V-A of this Act;
- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him



to be unlawful, arrest him and any other person in his company.

Explanation. –For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”

Explanation to Section 43 defines expression “public place” which includes any public conveyance. The word “public conveyance’ as used in the Act has to be understood as a conveyance which can be used by public in general.

15. In the instant case, from the evidence of the witnesses, it is apparent that Truck was intercepted by the Officers of the team of DRI Office, Patna, DRI Office, Muzaffarpur, on its reaching at Gopalganj, where DRI Team, Gorakhpur, was also present. Aforesaid Truck was intercepted and 54 Kg. *Charas* was recovered kept in 56 bags of polythene along with cash amount of Rs.1,28,000/-. Driver and *Khalasi* of the Truck (Appellants) could not produce any valid paper with regard to seized *Charas* as well as the amount. They confessed their guilt and their confessional statements were recorded. Three samples of *Charas* each of 5 gr. were prepared and sent for chemical examination. As per Chemical Examination Report, seized article was found to be *Charas*. Original document with regard to Godown Entry Register, original paper of certification of seized *Charas*, original paper of



certification of seized Truck (Registration No. UP 78 BT 3149), original paper of destruction of seized *Charas*, have been filed in the Court and the same have been marked as Ext.8, 9 10, and 11. Seizure list and *Panchnama* have also been produced during the evidence along with confessional statement of both the accused which have been marked as Ext.1, Ext.2, Ext.3 and Ext.4 respectively. Chemical reports of *Charas* have been marked as Ext.4 and 4/1. Certification for destruction of seized article has been marked as Ext.5. Certificate of destruction of narcotics has been produced and marked as Ext.6.

16. Thus, on the basis of aforesaid oral as well as documentary evidence filed on behalf of the prosecution and also the provision of law as contained in Section 42 and 43 of the Narcotic Drugs and Psychotropic Substances Act, as discussed above, this Court is of the view that the Court below after proper appreciation of the evidence of the witnesses available on record has convicted the Appellants for the offence under Section(s) 20(b) (II)(C), 23, 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act. Similarly, the Court below was fully justified in passing the sentence for the alleged offence of recovery of 54 Kg. *Charas* from the possession of the Appellants.

17. Therefore, this Court does not find any illegality



in the impugned judgment of conviction and order of sentence passed by the learned Court below against the Appellants.

18. In view of such, impugned judgment of conviction and order of sentence dated 22.02.2017 and 23.02.2017 respectively passed by the 8th Additional Sessions Judge, Muzaffarpur, in Trial No.07 of 2017 arising out of DRI Case No.08 of 2009, is hereby affirmed.

19. These Criminal Appeals are, accordingly, **dismissed.**

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	30-03-2018
Uploading Date	15-05-2018
Transmission Date	15-05-2018

