

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.474 of 2016

Arising Out of P.S. Case No. -30 Year- 2012 Thana -SUGAULI District- EAST
CHAMPARAN (MOTIHARI)

- =====
1. Sattan Paswan, S/o Munnilal Paswan, Village-Sripur Bhatwalia, P.S.-Sugauli, District-East Champaran.
 2. Harilal Chourasia, S/o Akshaiwar Chaourasia, Village-Dhala, P.S.-Kampiyarganj, District-Gorakhpur (U.P.).

.... Appellants

Versus

The State of Bihar

.... Opposite Party/Respondent

WITH

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Criminal Appeal (SJ) No. 529 of 2016

Arising Out of P.S. Case No. -30 Year- 2012 Thana -SUGAULI District- EAST
CHAMPARAN (MOTIHARI)

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Sudama Sah, Son of Late Ram Kuber Sah, resident of Village-Sripur, P.S.-Sugauli, District-East Champaran.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent

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Appearance :

(In CR. APP (SJ) No.474 of 2016)

For the Appellants : Mr. Prakash Tiwari, Adv.
Mr. Anand Tiwari, Adv.
Mr. Mahesh Kumar, Adv.

For the State : Mr. Bipin Singh, APP



(In CR. APP (SJ) No.529 of 2016)

For the Appellant : Mr. Uma Shankar Verma, Adv.
Mr. Binod Kumar Mishra, Adv.

For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 11-05-2018

Both the appeals have been heard together and a common judgment is being passed.

2. All the three appellants aforementioned have been convicted for the offences punishable under Sections 20(b), (ii)(C) read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short the **N.D.P.S. Act***) by judgment dated 25.05.2016, passed by the learned 3rd Additional Sessions Judge-Cum-Special Judge, N.D.P.S., East Champaran, Motihari in N.D.P.S. Case Nos. 16/62 of 2012/2015 and by order dated 30.05.2016, they have been sentenced to undergo rigorous imprisonment for ten (10) years, to pay a fine of Rs. 1,00,000/- and in default of payment of fine to further suffer additional imprisonment for six (6) months for the offences under Sections 20(b), (ii)(C) read with Section 29 of the N.D.P.S. Act.

3. The appellants have been found to be in possession of about one kilogram of Charas which was being



carried in two sacks, containing saw dust, in which two plastic packets of Charas were kept.

4. The prosecution version is based on the First Information Report lodged by the informant/Abhimanyu Kumar, who has been examined as P.W. 1. He has alleged that on 01.02.2012, while he along with the police party was on evening patrolling, he reached near the village-Kanihar at about 9:30 P.M. He along with the police party spotted the appellants moving on a bi-cycle towards sugar mill. On seeing the police party, the appellants left the bi-cycle and started fleeing away. However, they were apprehended on chase from a nearby wheat field. They disclosed their names as that of the appellants. From the two plastic bags, kept between the frames of the bi-cycle, two plastic packets, containing Charas like substance, were found. The appellants, who were arrested, disclosed that the two plastic packets contained Charas. An information was given regarding this to the Officer-in-Charge of the concerned police station. Thereafter, the Block Development Officer (*in short the **B.D.O.***) of the concerned Block came. In front of two independent witnesses, viz. Narad Puri and Subhash Puri, who have been examined as P.Ws. 3 and 4 respectively, the plastic packets were opened. From inside the plastic packets, two smaller packets were found. When the aforesaid plastic



packets were opened, it was found to be containing Charas like substance.

5. On the basis of the aforesaid written report, a case *vide* Sugauli P.S. Case No. 30 of 2012, dated 01.02.2012, was registered for investigation for the offences under Sections 20, 22 and 23 of the N.D.P.S. Act.

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

7. That the learned Trial Court, after examining eight witnesses on behalf of the prosecution and none on behalf of the defence convicted the appellants as aforesaid.

8. Learned counsels for the appellants, while assailing the judgment and order of conviction, have submitted that none of the mandatory provisions of the N.D.P.S. Act have been complied with. It has further been submitted that the sampling of the narcotics was not done at the place of recovery, rather it was done much later. The B.D.O., who has been examined as P.W. 7, has denied of having seen the process of recovery. He is only said to have put his signature on the seizure-list, without ascertaining what were the contents of the same and what were the contents of the plastic packets, which is said to have contained Charas. The seizure-list does not specifically refer



to the weight of the seized narcotic and on the aforesaid seizure-list, the signature of the appellant/Sudama Sah (Cr. Appeal (SJ) No. 529 of 2016) is not available. There is no reference in the entire deposition about where the rest of the seized articles were kept. It also does not appear to be clear whether the seized articles were produced before the Trial Court. No effort has been made by the police to ascertain the ownership of the bi-cycle which was being used for carrying the aforesaid narcotic.

9. Learned counsels for the appellants have also raised grievance that the charge-sheet in this case was submitted before the F.S.L. report was obtained. That apart, there is no reference of any material, which would show that the seized articles were sent to the *Malkhana* of the police station, after the samples were drawn. It has also been specifically alleged that the mandatory provisions of Sections 42(2) and 52-A of the N.D.P.S. Act have been blatantly flouted.

10. Under such circumstances, it has been argued that the judgment and order of conviction is only on the basis of presumptions, without there being any cogent material against the appellants. Lastly, it was argued that even the identification of the appellants, at the time of their being apprehended, also appears to be doubtful as they were found



to be present in a nearby wheat field. Nothing was recovered from the personal possession of the appellants.

11. In order to appreciate the aforesaid contentions of the appellants, it would be necessary to go through, briefly, the deposition of the witnesses.

12. The informant/Abhimanyu Kumar (P.W. 1) has, though, supported the prosecution version, but has stated that he had informed the Officer-in-Charge of the police station, viz. Shree Lalit Vijay Tiwari and the B.D.O. of Sugauli, viz. Baleshwar Narayan Singh, who reached the place of occurrence. In the meantime, other independent persons had also arrived. He has deposed that in front of the B.D.O. (P.W. 7), the two plastic sacks were opened. It was found to be filled with saw dust. From inside the aforesaid sacks, two plastic packets containing Charas were found. He, in paragraph 15 of his cross-examination, has deposed that he or any members of the police party did not offer themselves for search before any independent person. In the aforesaid paragraph, it has also been stated by the informant/P.W. 1 that the B.D.O. (P.W. 7) had sealed the seized material and in presence of P.W. 8 (Investigating Officer), the sacks were opened. He has also categorically stated that the plastic packets, containing Charas, were never opened. He never smelt the same. The packets containing



Charas, which were seized, were also not signed by the B.D.O. No sample was drawn in front of the B.D.O. P.W. 1, in paragraph 17 of his cross-examination, has further admitted that the appellants had run away when the police party had reached 10 feet distance from them. The appellants were arrested around 20 – 25 feet farther from the bi-cycle, which was left on the road.

13. From the deposition of the aforesaid witness, what becomes very clear is that though the two plastic packets were found to be containing Charas like substance, but those packets were never opened. On what basis did P.W. 1 presume that those packets contain Charas is not known. It has specifically been stated that the packets were not even smelt by P.W. 1.

14. Rajesh Kumar (S.I.), Raj Kumar Mali and Rajan Kumar Jha (Constables), who have been examined as P.Ws. 2, 5 and 6 respectively, are the members of the police party. They have, though, supported the prosecution version, but have testified to the fact that the appellants were caught while fleeing away and that the two packets of Charas were weighed together. No identification mark was put on the seized packets.

15. Narad Puri and Subhash Puri (P.Ws. 3 and 4) are the seizure-list witnesses, who have also stated that their



signature was obtained on blank piece of paper by the Officer-in-Charge/Investigating Officer of the police station. Thus, the aforesaid two seizure-list witnesses have not at all supported the prosecution version.

16. In this context, it would be very relevant to refer to the deposition of the B.D.O. (P.W. 7), who is stated to have arrived immediately on the arrest of the appellants. The B.D.O. (P.W. 7), in his cross-examination, has stated that the seizure-list was not prepared in his presence. Who prepared the seizure-list was also not known to him. He never opened the seized packets. He saw the appellants in the police station, whose names were told to him by the police officials. He had signed the seizure-list in his capacity as B.D.O. of the concerned Block. He has also admitted that no written requisition was given to him for reaching the place of occurrence or signing the seizure-list. He has also stated that the police did not record his statement.

17. Sikandar Kumar (P.W. 8) is the Investigating Officer of this case, who has stated that he had filed a requisition before the Court for sending the sample from the seized packets for forensic examination. A Judicial Magistrate was deputed for the aforesaid purpose. The sample was prepared in front of the aforesaid Judicial Officer, which was sent to the Forensic Science Laboratory. The requisition was



made on 10.02.2012, *i.e.* after about nine days of the search and seizure. He has also admitted that he had filed the charge-sheet awaiting the F.S.L. report. In the seizure-list, there was no signature of appellant/Sudama Sah (Cr. Appeal (SJ) No. 529 of 2016).

18. Thus, from the deposition of the aforesaid witnesses, the following lapses become evident:-

(i) There was no written information to the superior police officer by the informant/P.W. 1 or the Officer-in-Charge, who is said to have arrived at the place of occurrence on the arrest of the appellants, thereby violating the mandatory provisions of Section 42(2) of the N.D.P.S. Act;

(ii) The aforesaid Officer-in-Charge of Sugauli police station has not been examined at the trial;

(iii) The seizure-list does not refer to the specific weight individually of the two plastic packets in which Charas is said to have been kept;

(iv) No sampling was done at the place of the recovery;

(v) Sampling was only done on the requisition filed by P.W. 8 on 10.02.2012;

(vi) There is no evidence as to where the seized articles were kept;

(vii) The *Malkhana* register has not been brought on record;

(viii) The B.D.O. (P.W. 7) did not see the search and seizure proceedings. He has only signed the seizure-list in his capacity as B.D.O. of the



concerned Block. He did not even take care to open the plastic packets. The appellants were seen by him, for the first time, in the police station and he was informed about them being the appellants only by the police officials at the police station;

(ix) No inventory has been prepared or has been brought on record as mandated under Section 52-A of the N.D.P.S. Act; and

(x) While subjecting the appellants to search, neither the informant/P.W. 1 nor the other members of the raiding team offered themselves for search, thereby violating the provisions of Section 100 of the Code of Criminal Procedure, 1973.

19. The F.S.L. report, which is Exhibit-6, does not at all mention the mode in which the parcel was found to be packed on receipt and does not even give any description of the seal. The aforesaid report of the F.S.L. is dated 29.10.2012, sample of which was received in the F.S.L. on 27.03.2012.

20. The N.D.P.S. Act, 1985 was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for control and regulation of operations relating to narcotic drugs and psychotropic substances.

21. It has been, times without number, held by the Apex Court that to ensure avoidance of harm to the innocent



persons and abuse of the provisions by the Officers, the safeguards provided under the N.D.P.S. Act have to be observed strictly. [refer to ***State of Punjab Vs. Balbir Singh (1994) 3 SCC 299***; and ***Saiyad Mohd. Saiyad Umar Saiyad & Ors. Vs. State of Gujarat (1995) 3 SCC 610***]. Similar view has been expressed by the Constitution Bench of the Supreme Court in case of ***State of Punjab Vs. Baldev Singh (1999 (6) SCC 172***).

22. The provisions of the N.D.P.S. Act, which appear to have been violated in the present case, are mandatory and such non-observance of the mandatory provisions only vitiates the trial.

23. To tie the strings together, the mandatory provisions of Sections 42(2) and 52-A of the N.D.P.S. Act have been violated; where was the seized articles kept prior to samples being drawn and sent to the F.S.L. is not known; the identification of the appellants being doubtful as they were arrested in the wheat field and were not found to be in personal possession of any narcotic substance; and the B.D.O. (P.W. 7) and the seizure-list witnesses not supporting the prosecution version, combined together have given a death knell to the prosecution version.

24. Thus, the conviction and sentence of the appellants cannot be sustained in the eyes of law.



25. For the reasons aforesaid, the judgment of conviction dated 25.05.2016 and order of sentence dated 30.05.2016, passed by the learned 3rd Additional Sessions Judge-Cum-Special Judge, N.D.P.S., East Champaran, Motihari in N.D.P.S. Case Nos. 16/62 of 2012/2015, arising out of Sugauli P.S. Case No. 30 of 2012, as against the appellants are set-aside.

26. The appeals, therefore, succeed.

27. The appellants/Sattan Paswan and Harilal Chourasia (Cr. Appeal (SJ) No. 474/2016) and the appellant/Sudama Sah (Cr. Appeal (SJ) No. 529/2016) are in custody. They are directed to be released forthwith, if not wanted in any other criminal case.

28. 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
Uploading Date	15.05.2018
Transmission Date	15.05.2018

