

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.982 of 2018

Arising Out of P. S. Case No.-197 Year-2016 Thana-AMNAUR District- SARAN

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Madan Singh, S/o Late Ramratan Singh, R/o Village and P.O.-
Parshurampur, P.S.-Amnaur, District-Saran at Chapra.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent

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Appearance :

For the Appellant/s : Mr. Ajay Thakur, Adv.

For the State : Ms. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 06-08-2018

The appellant/Madan Singh has been convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short the N.D.P.S. Act, 1985*) by judgment dated 21.02.2018 passed by the learned 1st Addl. Sessions Judge, Saran at Chapra in N.D.P.S. Case No. 5 of 2016 (C.I.S. Registration No. 3 of 2017), arising out of Amnour P.S. Case No. 197 of 2016, and by order dated 26.02.2018, he has been sentenced to undergo rigorous imprisonment for five years for the aforesaid offence, to pay a fine of Rs. 50,000/- and in default of payment of fine, to further suffer simple imprisonment for six



months.

2. Three and a half kilograms of Ganja is stated to have been recovered from the house of the appellant.

3. The F.I.R. has been lodged by one Uday Kumar (P.W. 2), who has alleged that he, while on patrolling duty in the day time on 18.11.2016, received an information through a spy that Madan Singh of Village-Parshurampur, who has been dealing in narcotics, is present in his house and on search of his house, narcotics can be recovered. The aforesaid information was sent through wireless to the Circle Officer, Amnour with a request to accompanying him to the aforesaid village for the purposes of raid. On the refusal of the Circle Officer to be part of the raiding team, the Block Development Officer, Amnour was contacted by him. He also expressed his inability. The informant, thereafter, proceeded towards Village-Parshurampur and when he reached near the house of the appellant, one person was spotted running away. He was apprehended and he disclosed his name as that of the appellant. His house was searched in presence of two independent persons, viz. Santosh Singh and Naveen Singh, both of them are villagers of Parshurampur village and from there, a tin-box, containing three and a half kilograms of *Ganja*, was recovered. The *Ganja* was weighed by the weighing scale which was provided by the appellant



himself. Two samples of 100 grams each were prepared and a seizure-list also was made. The appellant and the witnesses signed on the seizure-list.

4. On the basis of the aforesaid written report, a case *vide* Amnour P.S. Case No. 197 of 2016, dated 18.11.2016, was instituted for investigation for the offence under Section 20 of the N.D.P.S. Act, 1985.

5. The police, after investigation submitted charge-sheet, whereupon cognizance was taken and the case was tried before the Special Court.

6. The learned Trial Court, after examining six witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

7. While assailing the judgment of conviction and order of sentence, Mr. Ajay Thakur, learned Advocate for the appellant has submitted that the mandatory requirement under Section 42 (2) the N.D.P.S. Act, 1985 has not been followed and, therefore, the entire prosecution case has become suspect. It has further been submitted that the sampling was not done in accordance with Section 52 of the N.D.P.S. Act, 1985 and the Standing Instructions of the Narcotics Control Bureau in that regard. Lastly, it has been submitted that the samples were sent to Forensic Science Laboratory (*in short the F.S.L.*), Muzaffarpur and Kolkata



after about one and half months without there being any plausible explanation for such delay. Additionally, it has been argued that the seized narcotics and the samples were not distinctively marked and there is no evidence on record except for the oral testimony of the witnesses that the samples as well as the main consignment were kept in the *Malkhana*. On the aforesaid grounds, it has been urged that the judgment of conviction and order of sentence be set-aside.

8. In order to appreciate the contentions raised on behalf of the appellant, it would be necessary to refer to the deposition of the informant and the Investigating Officer, viz. P.W. 2 and P.W. 5, respectively.

9. The informant/P.W. 2 has, though, supported the prosecution version, but there is nothing in his deposition from which it could be inferred that after the raid and the seizure, the information was reduced in writing and transmitted to the superior officer in accordance with Section 42 (2) of the N.D.P.S. Act, 1985. Rather, in his cross-examination, he has admitted that the aforesaid information, which he received through a spy, was never reduced in writing and sent to any superior police officer. However, what has been admitted by him in his evidence is that he had made the appellant known that he had a right to be searched



by a Gazetted Officer and also offered himself for being searched by the appellant. He has further admitted in his cross-examination that from the consignment of narcotics, he drew two samples, weighing 100 grams each and they were kept in separate boxes. However, no separate seal or mark was put on the aforesaid samples. There is no reference as to where those samples and the consignment, which were seized from the house of the appellant, were kept. It has only been stated by him that the same was sent to the *Malkhana*. However, there is nothing on record regarding the same having been kept in the *Malkhana*.

10. The Investigating Officer, *viz.* Arvind Kumar Singh (P.W. 5) has deposed that he took up the investigation of the case on 18.11.2016 and, thereafter, recorded the statement of the witnesses. He had inspected the house of the appellant and had noted down the boundary of the house in his report. He had also recorded the statement of the seizure-list witnesses, *viz.* Santosh Singh and Naveen Singh, both of whom have not been examined at the trial. He has stated in his cross-examination that the samples were sent to the F.S.L. at Muzaffarpur and to Kolkata on 03.02.2017 and 06.02.2017 respectively. No explanation has been given by him for sending the aforesaid samples after about one half months. Even the permission for sending the same to



the F.S.L. was obtained on 17.01.2017, *i.e.* after about a month of the seizure of the same.

11. Thus, from the deposition of P.W. 5 also, the case with respect to the appellant appears to be doubtful, especially with respect to the samples which were sent for forensic/chemical examination.

12. The test-memo further refers one aspect which is rather disturbing. The laboratory at Kolkata was in receipt of sample weighing 100 grams. After the test report, the weight of the sample was found to be more, though slightly. This also appears to be rather surprising as the weight should have been less, even by few grams.

13. In any view of the matter, what has caught the attention of this Court for doubting the correctness of the prosecution version are as hereunder:-

(i) No explanation has been given for non-examination of the two independent persons who have testified to the seizure of the narcotics from the house of the appellant, even though they hail from the same village as that of the appellant;

(ii) The information provided to P.W. 2 through a spy and the consequent raid in the house of the appellant had not been reduced in writing within the stipulated period of seventy six hours, which makes the prosecution case highly doubtful; and

(iii) The samples were not properly



marked and no facsimile seems to have been prepared for it to be sent to the *Malkhana* and, thereafter, to the F.S.L. In the absence of any special mark, it would be very difficult to assume that the same sample was sent to the F.S.L. which was prepared in the present case.

14. Times without number, this Court as well as the Apex court has held that the provisions of N.D.P.S. Act, 1985 are very stringent and, therefore, Courts would be very reluctant to brook of any departure from the rules set forth therein.

15. Since the compliance of Section 42 (2) of the N.D.P.S. Act, 1985 has been held to be mandatory, non-observance of the same has made the prosecution case absolutely doubtful and the judgment of conviction and order of sentence being unsustainable in the eyes of law. That apart, the manner in which the consignment has been seized from the house of the appellant and has been weighed by the scale provided by the appellant himself, it appears that some force has been used or the appellant has been falsely implicated. Non-examination of the independent witnesses, without any reasonable explanation also buttresses the contention of the appellant that he has falsely implicated in this case.

16. Regard being had to the totality of the



circumstances, benefit of doubt is required to be given to the appellant. This Court has been informed that the appellant has remained in jail for approximately two years.

17. In any view of the matter, since the prosecution has not been able to prove the case beyond all reasonable doubts, benefit of doubt is given to the appellant.

18. Thus, the judgment of conviction dated 21.02.2018 and order of sentence dated 26.02.2018 , passed by the learned 1st Addl. Sessions Judge, Saran at Chapra in N.D.P.S. Case No. 5 of 2016 (C.I.S. Registration No. 3 of 2017), arising out of Amnour P.S. Case No. 197 of 2016, is, hereby, set-aside.

19. The appeal succeeds.

20. The appellant/Madan Singh is in custody. He is directed to be released forthwith from jail, if not wanted in any other case.

21. 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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