

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1417 of 2019

Arising Out of PS. Case No.-14 Year-2013 Thana- SANJHOLI District- Rohtas

MANOJ KUMAR SINGH Son of Gorakh Singh Resident of Village - Sangauli, P.S.- Sanghauili, District - Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Dr. Rajesh Kumar Singh, Adv.
For the Respondent/s : Mr. Z Hoda, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

26-07-2019

Sole appellant, Manoj Kumar Singh having been found guilty for an offence punishable under Section 20 of the NDPS Act, sentenced to undergo RI for seven years as well as to pay fine appertaining to Rs. 1,00000/- (one lac), in default thereof, to undergo SI for one year, vide judgment of conviction dated 22.01.2019 and order of sentence dated 29.01.2019 passed by 4th Additional Sessions Judge, Rohtas at Sasaram relating to NDPS, Sanjhauili PS case No. 14/2013.

2. Manager Ram (PW 5) recorded his self statement on 05.05.2013 disclosing therein that he got confidential information with regard to sale of Ganja by Manoj Kumar Singh of Village-Sanjhauili and for that purpose a huge quantity of Ganja is stored at his place, whereupon, a raiding party was constituted and after informing the CO (PW 4), raid



was conducted. It has further been disclosed that seeing the police personnel, one person escaped therefrom who, later on, has been disclosed to be the appellant, Manoj Kumar Singh. Furthermore, in presence of tenant as well as Munna Kumar and Deepak Kumar Ram, house was searched and during course thereof, from a room 13 Kilograms of Ganja was found kept in a plastic bag along with a weighing balance-weight for which, seizure list was prepared.

3. After registration of Sanjhauli PS Case No. 14/2013, investigation commenced followed with submission of charge-sheet whereupon, the trial commenced and concluded in a manner, subject matter of instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, neither oral nor documentary evidence has been adduced in defence.

5. Altogether six PWs have been examined on behalf of prosecution in support of its case who are PW-1, Dipak Kumar Ram, PW-2, Munna Kumar, PW-3, Rajendra Singh, PW-4, Amrendra Kumar, PW-5, Manager Ram and PW-6, Narendra Prasad. Side by side, has also exhibited Ext-1 series, Signature of respective seizure list witnesses, Ext-2,



Seizure List, Ext-2/1, Signature of informant over seizure list, Ext-3, Self Statement, Ext-4, Formal FIR, Ext-5, FSL report. As stated above nothing has been adduced on behalf of defence.

6. Heard learned counsel for the appellant as well as learned APP, also gone through the judgment.

7. This case has got some sort of peculiarity. As is evident, after marshalling of evidence of PWs 4, 5 and 6 that due to malfunctioning of the Thana Staff detrimental to the institution, the informant of this case, PW-5 requisitioned the CO (PW 4) to verify the Maalkhana and during course thereof, as is evident from the cross-examination (Para-8) of PW-5 that there was entry of 325 Kilograms of Ganja but on physical verification only 285 Kilograms was there. That means to say, there was shortage of 40 Kilograms of Ganja. Further from his cross-examination (Para 8), it is evident that the quantum of deficit is the subject of so alleged recovery from the house of the appellant. Recovery has been shown as 13 Kilograms. So, again there happens to be some sort of illegal activity whereunder 17 Kilograms of Ganja is found siphoned. When the evidence of PW-4, the CO is gone through, in para-7, there happens to be an admission at his end that later on, he came to know that aforesaid Ganja was procured from the police station



itself and has been shown to be recovered from the house of the appellant. It is further evident that at an initial stage only Manoj Kumar Singh was made an accused in this case but, during course of investigation the police personnel of Thana, namely, Surendra Vidyarthi, Baijnath Nut have also been made accused. From the evidence of IO at para-10, he had stated that neither he nor Darogaji was knowing since before that the seized Ganja was procured from the Thana Maalkhana. In para-11, he has stated that on request of O/C, there was verification of Thana Maalkhana. At that very time, Rafail Tuddu was Thana Incharge and then, the whole event got exposed. It is further evident from the judgment impugned that aforesaid two, namely, Baijnath Nut as well as Surendra Vidyarthi have been acquitted while appellant has been convicted and sentenced.

8. Now coming to the nature of the witnesses, it is evident that Pws-1 and 2 are seizure list witnesses who have simply exhibited their signatures without substantiating the case on merit, though were not declared hostile. PW-3 did not support the case of the prosecution, on account thereof, was declared hostile. PW-4 is the CO, PW-5 is the informant and PW-6 is the IO.

9. From the evidence of PWs 4, 5, it is evident



that there happens to be specific disclosure at their end that after recovery of Ganja, sample was prepared at the spot itself, sealed and in likewise manner, Ganja was also sealed, but none of them, has stated that during course thereof, signature of any of the witnesses or accused has been taken. They have not disclosed as to how much quantity was taken out for preparation of sample. They have not spoken a word with regard to presence of other family members and further, tendering a copy of the seizure list to any of them or any of the tenant, or pasted over the house. So far evidence of PW-6, IO is concerned, in para-3 of his examination-in-chief, he has simply stated that after getting an order from the learned Sessions Judge, he sent the Ganja to FSL, Patna. From his evidence, it is evident that he had not spoken a word with regard to preparation of sample at the spot even though, he was one of the members of the raiding party. He has also stated under para-4 that on account of shortage having been found with regard to storage of Ganja at the Thana Maalkhana, the respective officials, Baijnath Nut as well as Surendra Vidyarthi have also been arrayed as accused against whom, charge-sheet has also been submitted.

10. Because of the fact that the police officials have already been made an accused, on account thereof, shifting



of Ganja from Thana Maalkhana to the place of appellant-accused is found admitted. Although, no relevant documents, that means to say, the petition having been filed by the O/C, PW-5 before CO, PW-4 for verification of Maalkhana, order of superior officials, verification report, shortage of 40 Kilograms of Ganja and then as per evidence the quantity of shortage relates with recovery of the Ganja from the house of appellant but, only 13 Kilograms, again having shortage of 17 Kilograms, speak some sort of underhand activity at the end of prosecution party in order to save the officials and that also has adverse impact over their stand against the appellant. Moreover, the so alleged seized Ganja has not been produced during course of trial.

11. The Hon'ble Apex Court in the case of ***Mohinder Singh v. State of Punjab reported in AIR 2018 SC 3798*** has held as follows and for better appreciation the relevant para is quoted below:-

“12. For proving the offence under the NDPS Act, it is necessary for the prosecution to establish that the quantity of the contraband goods allegedly seized from the possession of the Accused and the best evidence would be the court records as to the production of the contraband before the Magistrate and deposit of the same before the Malkhana or the document showing destruction of the contraband.



13. In *Vijay Jain v. State of Madhya Pradesh* (2013) 14 SCC 527, this Court reiterated the necessity of production of contraband substances seized from the Accused before the trial court to establish that the contraband substances seized from the Accused tallied with the samples sent to the FSL. It was held that mere oral evidence to establish seizure of contraband substances from the Accused is not sufficient. It was held as under:

“10. On the other hand, on a reading of this Court's judgment in *Jitendra v. State of M.P.* (2004) 10 SCC 562, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the Accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the Accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in *Ashok v. State of M.P.* (2011) 5 SCC 123, this Court found that the alleged narcotic powder seized from the possession of the Accused was not produced before the trial court as material exhibit and there was no explanation for its non-production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the Appellant.

12. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is



set aside. Appeal is allowed.

13. Appellant is under custody, he is directed to
be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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