

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.158 of 2016

Arising Out of PS. Case No.-79 Year-2008 Thana- BUXAR INDUSTRIAL District- Buxar

1. Santosh Kumar son of Ram Nath Kushwaha, resident of Village-Itarhi, PS-Itarhi, Distt-Buxar.
2. Fulchand Ram son of Late Mag Ram, resident of Village-Atarauna, PS-Itarhi, District-Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.N.P. Sinha, Sr. Adv. Mr. Jagdish Prasad, Adv. Miss. Rashmi Bharti, Adv.
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

30-08-2019

Appellants, Santosh Kumar and Fulchand Ram

have been found guilty for an offence punishable under Section 20(b) (ii) (c) of the NDPS Act (in short 'the Act'), each one has been sentenced to undergo RI for ten years as well as to pay fine of Rs. 1,00000/- (One Lac) in default thereof, to undergo RI for three years vide judgment of conviction dated 15.01.2016 and order of sentence dated 16.01.2016 passed by Special Judge, Buxar in NDPS Case No. 07/2008.

2. Before having cadence of relevant facts, it looks appropriate to incorporate the fact that after arrest of these two appellants, an inculpatory confessional statement of appellant, Santosh Kumar was recorded whereunder there was



disclosure against co-accused, Jai Prakash Singh @ Majhil Singh (since acquitted) who surrendered before the learned lower court, later on, on account thereof, NDPS Case No. 7-A/2008 independently sailed against him but, by virtue of common judgment, both the cases, that means to say, NDPS Case No. 7/2008 and 7A/2008 have been dealt with acquitting, the aforesaid Jai Prakash Singh @ Majhil Singh while these two appellants have been convicted.

3. The prosecution case as is evident from the self statement of P. Ranjeet Singh, Officer-in-charge of Industrial Area Police Stated, Buxar (PW 3) recorded on 17.09.2008 at about mid-day divulging therein that while he along with ASI, Bali Ram (PW 2), Constable, Jaikumar, (PW 6), Lalji Ram (PW 1), Kamlesh Pande (not examined), Shivjee Singh (PW 5) were engaged in vehicle checking in front of police station on Ara-Buxar main road at about 10 O'clock, one Hero Honda occupied by two persons came in high speed. Pillion rider has kept a bag in between over the motorcycle. Seeing the police, the driver diverted the direction whereupon, they became apprehensive, chased them with police jeep and then, near Buxar Golumber, Hanuman Temple, the motorcyclist was intercepted, cordoned and then they were interrogated.



During course of interrogation, the driver has informed his name as Santosh Kumar while the pillion rider as Fulchand Ram. In presence of two seizure list witnesses, they were searched out and during course thereof, from the pocket of Santosh, cash appertaining to Rs. 10,000/- of different denominations, a Nokia mobile bearing SIM No.9006847604 was seized. From the physical possession of Fulchand nothing has been recovered. When the bag possessed by him was seen, smell of Ganja was there, whereupon, they perceived the bag having Ganja, whereupon they both were offered to be searched in presence of Gazetted Officer/Magistrate. They both admitted that Ganja is there and, they are ready to be searched by them. Thereafter, bag has been searched and during course thereof, Ganja has been found. After taking weighing machine from nearby shop, it was weighed and found to be 20 Kilograms. Motorcycle has also been seized and for that, seizure list has been prepared in presence of both the witnesses, namely, Jagdish Thakur (PW 4) and Bashisth Sah (PW-7). A copy thereof, has been served upon both the accused persons who also put their signature/LTI. Thereafter, sample was taken out therefrom weighing one KG, and then, it was sealed bearing mark S-1, S-2 having signature of witnesses, both the accused and he himself along with



another officer of the raiding party. The remaining 18 Kilograms of Ganja was also sealed in similar way having signature of all of them and marked as 'A'. Then thereafter, the specimen seal has also been prepared in presence of the witnesses who put their signature. Then thereafter, they have come to the police station.

4. It has also been disclosed that after exercising power under Section 67 of the Act, they have inquired Santosh and Fulchand and during course thereof, Santosh has disclosed that for the last 2-3 years, he is engaged in transporation of Ganja. The seized Ganja has been purchased from Jai Prakash Singh of Balihar Village, Distt-Buxar after paying consideration amount of Rs. 20,000/- and was going to Itarhi for the pus-pose of sale but, unfortunately, has been apprehended in the midst of way. It has also been disclosed that out of ill-gotten money from the business of Ganja, he has constructed a building at Itarhi, has also purchased some lands, motorcycle and further, happens to be the source of his livelihood. Fulchand disclosed to be active partner of Santosh Kumar whereupon, he received sumptuous amount.

5. Accordingly, Buxar PS Case No. 79/2000 has been registered followed with investigation as well as



submission of the charge-sheet, facilitating the trial meeting with ultimate result, subject matter of instant appeal.

6. 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. Two witnesses have also been examined at the end of appellant, Santosh Kumar as well as evidence of seizure list witnesses has also been exhibited relating to NDPS Case No. 7A/2008.

7. In order to substantiate its case, prosecution has examined altogether 9 PWs out of whom PW-1, Lal Jee Ram, PW-2, Bali Ram, PW-3 P. Ranjeet Singh (informant) PW-4, Jagdish Thakur, PW-5, Shivjee Singh, PW-6, Jay Kumar Yadav, PW-7, Bashisth Sah, PW-8, Ganesh Hambrem, PW-9, Ram Nath Ojha as well as has also exhibited Ext-1 Series, Signature of different persons over relevant documents, Ext-2, Consent letter in accordance with Section 50 of the Act, Ext-3, Seizure List, Ext-4, sample of seal, Ext-5, Formal FIR, Ext-6, confessional statement and Ext-7, FSL. Materials have also been made as Material Exhibit and those are Exts. 1 to I/LIX-60(sixty) currency notes of Rs. 100/-, Material Exts.I/LX to I/LXVII 8(eight) currency notes of Rs. 500/-, Material Exts.II-, A Nokia mobil of slate colour, Material Ext-III, Sealed bag of Ganja,



Material Ext-IV-Black Bag with Ganja, Material Ext-V, Motorcycle bearing no. UP-60H-5460, Ext-1 & 1/1, Signatures of Baliram on Seizure List & Sample of seal respectively.

8. As stated above, two DWs namely, DW-1, Hari Lal Mahto, DW-2, Bansh Raj Kushwaha have been examined on behalf of appellant Santosh while deposition of PW-2 relating to NDPS Case No. 7A/2008 has been made exhibit as Ext-A, C.C of deposition of PW-3 of NDPS Case No. 7, 7A/2008 has been made Ext-A/1.

9. While assailing the judgment of conviction and sentence, manifold argument has been raised on behalf of appellants. The first and foremost argument is that there happens to be serious lapses at the end of the prosecution in proper compliance of the mandatory provision of law. As such, the finding so recorded by the learned lower court would not survive. In order to substantiate the same, it has been submitted that neither there happens to be compliance of Section 42(2) of the Act nor under Section 57 of the Act. Consequent thereupon, the whole edifice of the prosecution would get dismantle. In likewise manner, it has also been submitted that on account of non compliance of Section 50 of the Act, the version of the prosecution has got no legal sanctity whereupon, the finding so



recorded at the end of the learned lower court would not be considered to a legal finding. Furthermore, it has also been submitted that no inventory has been prepared before the Magistrate.

10. In its continuity, it has also been submitted that the seizure list witnesses have not supported, substantiated the case of the prosecution so, the evidence of only police official remained which could not be accepted as, would suffer from biasness. In order to justify their own misdeeds wherein appellants have been apprehended in an illegal manner, they will take tooth and nail, hence their testimony would not be fit for acceptance. So, in sum and substance, the prosecution suffers from inherent lacunae and that being so, the judgment impugned is fit to be set aside.

11. On the other hand, learned APP while supporting the finding recorded by the learned lower court has submitted that after going through the judgment impugned, it is evident that the learned lower court has meticulously examined the activity of the prosecution having been exposed during course of apprehension of the accused, recovery, search and seizure, sampling and having been in accordance with law in consonance with the oral evidence, rightly passed the judgment



impugned, as such, do not attract interference.

12. Before coming to the oral evidence, the relevant provisions of law in consonance with its compliance, repercussion on account of non compliance are to be seen at first instance before entering into the oral evidence. It is manifest from the prosecution evidence that prosecution party was not at all knowing since before with regard to transportation of Ganja rather, during course of routine vehicular checking at Arrah-Buxar main road, a public place the activity of the appellants who were on motorcycle, led suspicion whereupon, chased and after covering some distance, were intercepted and then recovery on search, as alleged, has taken place. In that circumstance, whether it could be within the ambit of Section 42 of the Act or under Section 43 of the Act and for that, in ***SK Raju alias Abdul Haque alias Jagga v. State of West Bengal reported in 2019 CrLJ 407***, the Hon'ble Apex Court has dealt with as follows:-

“5. Section 42 of the Act deals with the power of entry, search, seizure and arrest without warrant or authorization. It reads thus:

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 VA 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.

Section 43 of the Act confers powers on the empowered officer to seize a substance and arrest a suspect in a public place. It provides thus:

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 VA 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.

6. We are unable to accept the submission made by the learned Counsel for the Appellant that Section 42 is attracted to the facts of the present case. In *State of Punjab v. Baldev Singh* ("Baldev Singh"), : (1999) 6 SCC 172 Chief Justice Dr. A.S. Anand speaking for a Constitution Bench of this Court, held:

The material difference between the provisions of Section 43 and Section 42 is that whereas Section 42 requires recording of reasons for belief and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure, Section 43 does not contain any such provision and as such while acting Under Section 43 of the Act, the empowered officer has the power of seizure of the Article etc. and arrest of a person who is found to be in possession of any Narcotic Drug or Psychotropic Substances in a public place where such possession appears to him to be unlawful.

In *Narayanawamy Ravishankar v. Assistant Director, Directorate of Revenue Intelligence*, : (2002) 8 SCC 7 a three judge Bench of this Court considered whether the empowered officer was bound to comply with the mandatory provisions of Section 42 before recovering heroin from the suitcase of the Appellant at the airport and subsequently arresting him. Answering the above question in the negative, the Court held:

In the instant case, according to the documents on record and the evidence of the witnesses, the search and seizure took place at the airport which is a public place. This being so, it is



the provisions of Section 43 of the NDPS Act which would be applicable. Further, as Section 42 of the NDPS Act was not applicable in the present case, the seizure having been effected in a public place, the question of non-compliance, if any, of the provisions of Section 42 of the NDPS Act is wholly irrelevant.

In Krishna Kanwar (Smt.) Alias Thakuraeen v. State of Rajasthan, : (2004) 2 SCC 6081 a two judge Bench of this Court considered whether a police officer who had prior information was required to comply with the provisions of Section 42 before seizing contraband and arresting the Appellant who was travelling on a motorcycle on the highway. Answering the above question in the negative, the Court held:

Section 42 comprises of two components. One relates to the basis of information i.e.: (i) from personal knowledge, and (ii) information given by person and taken down in writing. The second is that the information must relate to commission of offence punishable under Chapter IV and/or keeping or concealment of document or Article in any building, conveyance or enclosed place which may furnish evidence of commission of such offence. Unless both the components exist Section 42 has no application. Sub-section (2) mandates, as was noted in Baldev Singh case that 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 forthwith send a copy thereof to his immediate official superior. Therefore, Sub-section (2) only comes into operation where the officer concerned does the enumerated acts, in case any offence under Chapter IV has been committed or documents etc. are concealed in any building, conveyance or enclosed place. Therefore, the commission of the act or concealment of document etc. must be in any building, conveyance or enclosed place.

7. An empowered officer Under Section 42(1) is obligated to reduce to writing the information received by him, only when an



offence punishable under the Act has been committed in any building, conveyance or an enclosed place, or when a document or an Article is concealed in a building, conveyance or an enclosed place. Compliance with Section 42, including recording of information received by the empowered officer, is not mandatory, when an offence punishable under the Act was not committed in a building, conveyance or an enclosed place. Section 43 is attracted in situations where the seizure and arrest are conducted in a public place, which includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

8. The Appellant was walking along the Picnic Garden Road. He was intercepted and detained immediately by the raiding party in front of Falguni Club, which was not a building, conveyance or an enclosed place. The place of occurrence was accessible to the public and fell within the ambit of the phrase "public place" in the explanation to Section 43. Section 42 had no application.

13. And that being so, detention of the appellant at a public place, i.e. at the road, will not come within the purview of Section 42 rather it will be under Section 43 and so the mandatory provision of Section 42(2) of the Act will be available. So far ambit and scope of Section 57 is concerned, in ***Gurbax Singh v. State of Haryana as reported in (2001)3 SCC 28***, it has been held that non compliance of Section 57 of the Act would not *ipso facto* violate the trial of the conviction as are directive in nature.

14. With regard to applicability of Section 50 of



the Act, it is evident that the said matter has been properly dealt with by the Constitution Bench in *State of Punjab v. Baldev Singh* as reported in (1999) 6 SCC 172 but deflection therefrom in due course of time again been subject of consideration in *Karnail Singh v. State of Haryana* reported in (2009) 8 SCC 539 and then, in *Vijaysingh Chandubha Jadeja v. State of Gujrat: (2011) 1 SCC 609* wherein it has been observed by the Constitution Bench that same is only applicable during course of search of a person and then lastly guidelines have been prescribed under para-29 which reads as follows:-

“29. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate. We have no hesitation in holding that in so far as the obligation of the authorised officer under Sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision.



15. That means to say, the requirement of Section 50 of the Act is available only to the extent of physical search of a person and not beyond that.

16. It has further been noted down that having some sort of skirmishes over mode of seizure and sampling, the Apex court in *Union of India v. Mohan Lal* as reported in **2016 (3) SCC 379** has properly been dealt with in following manner:-,

12. Section 52-A(1) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. The Central Government have in exercise of that power issued Standing Order No. 1/89 which prescribes the procedure to be followed while conducting seizure of the contraband. Two subsequent standing orders one dated 10.05.2007 and the other dated 16.01.2015 deal with disposal and destruction of seized contraband and do not alter or add to the earlier standing order that prescribes the procedure for conducting seizures. Para 2.2 of the Standing Order 1/89 states that samples must be taken from the seized contrabands on the spot at the time of recovery itself. It reads:

“ 2.2. All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should



invariably be made in the panchnama drawn on the spot.

13. Most of the States, however, claim that no samples are drawn at the time of seizure. Directorate of Revenue Intelligence is by far the only agency which claims that samples are drawn at the time of seizure, while Narcotics Control Bureau asserts that it does not do so. There is thus no uniform practice or procedure being followed by the States or the Central agencies in the matter of drawing of samples. This is, therefore, an area that needs to be suitably addressed in the light of the statutory provisions which ought to be strictly observed given the seriousness of the offences under the Act and the punishment prescribed by law in case the same are proved. We propose to deal with the issue no matter briefly in an attempt to remove the confusion that prevails regarding the true position as regards drawing of samples.

14. Section 52A as amended by Act 16 of 2014, deals with disposal of seized drugs and psychotropic substances. It reads:

Section 52A: Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered Under



Section 53, the officer referred to in Sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in Sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) When an application is made Under Sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs, psychotropic substances, controlled substances or conveyances] and any list of samples drawn Under Sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.]

15. It is manifest from Section 52A(2)(c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer in-charge of the nearest police station or to the officer empowered Under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the



correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with Sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

17. That means to say the Circular so issued under 1/88, 1/89 has got primacy and the process of seizure and sampling be in accordance therewith.



18. Now the oral evidence has to be seen in order to search out whether there happens to be proper compliance of the mandatory provision of law or not and in this way, first of all the evidence of PW-6, the informant is to be seen. During his examination-in-chief, he has stated that on 17.09.2008 at about 10:00 AM while he along with ASI Bali Ram as well as Constable were engaged in vehicular checking, two persons having a bag over the motorcycle came in high speed. As soon as they saw the police, they diverted the direction towards Golumber (western side). As a result of which, they suspected some foul, chased them on vehicle and then intercepted them on the road near Mahavir Mandir, cordoned and forced them to stop. Thereafter, they were interrogated whereupon the driver disclosed his identity as Santosh Kumar of village Itarhi, District-Buxar while the pillion rider to be Fulchand of village, Atarauna, PS-Itarhi, District-Buxar. They both were searched out in presence of Jagdish Thakur and Bashisth Sah and during course thereof, cash, mobile were found, for that, seizure list was prepared having presence of seizure list witnesses along with both the accused. The aforesaid money has been produced before the court and has been marked as material exhibits. Envelop has also been made an exhibit bearing signature/LTI of



the witness/accused. Nokia Mobile has also been produced which was kept in an envelop. Then thereafter, it has been stated that Fulchand who was carrying a black big bag was giving smell like Ganja and so, they found it prudent to have search and seizure in accordance with the Act, whereupon, they requested the accused persons that if they so desire, the search would be before a Gazetted Officer/Magistrate and for that, he had served a notice over which, both of them voluntarily disclosed presence of Ganja inside the bag and further, to be searched by them which they also endorsed over the notice. Accordingly, in presence of two witnesses, the bag was searched whereupon, Ganja was recovered. It was 20 Kilograms. One Kg each was taken out as sample which was sealed. Mark was also put thereupon as S-1 and S-2 while remaining 18 Kilograms was also wrapped and sealed which was marked as 'A', aforesaid items have been produced in court and has been material exhibit having signature of the concerned (witnesses, accused, informant as well as Bali Ram).

19. It has also been stated that the seized motorcycle is brought and is parked outside the Ijlas as material exhibit and for that, it has been incorporated that seizure list was prepared over which, the witnesses have put



their signatures. A copy thereof, was served upon the accused persons who also put their LTI/signature in token thereof. He has also prepared specimen of seal articles in presence of witnesses and also exhibited the same. It has further been disclosed that on query Santosh Kumar disclosed that he had purchased the aforesaid Ganja from Jai Prakash Singh after paying Rs. 20,000/- and was in a way to Itarhi, during midst thereof, they have been apprehended. It is further disclosed that he along with accused came to the police station where a case was registered and then, investigation has been entrusted to Ganesh Hembram (exhibited all documents). Also informed the higher police officials. Identified the accused.

20. During cross-examination at para-12, he has stated that when the accused sped away the motorcycle in front of him and crossed the checking point, then thereafter, they chased through jeep. Motorcycle was intercepted after covering three-four Kilometres, during midst thereof, the occupants of the motorcycle have not tried to throw away the bag. In para-13, he has stated that in his self-statement he has not mentioned that the bag was kept in between. He has further stated that they were in dress at the time of checking. He has further stated that after the aforesaid event, they have not continued with vehicle



checking. He has further stated that first of all, Santosh was checked and from his possession Rs. 10,000/- cash, Nokia mobile were found and then thereafter, another man was checked. Seizure list witnesses have arrived at the spot. Only one seizure list has been prepared. He has not recorded statement of accused under Section 67 of the Act. He has not recorded inculpatory extra-judicial confessional statement of the accused persons. He had not mentioned PS Case No. Then denied the suggestion to the effect that all the events have been framed in order to wrongly prosecute the accused.

21. PW-8 is the IO. He has stated that he happens to be IO of Case No. 79/2008. He has further stated that he has recorded inculpatory extra-judicial confessional statement of accused (exhibited the same). After taking investigation, first of all he has recorded further statement of the informant. Then of other witness. Inspected the PO which happens to be the main road of Ara-Buxar (NH-84) near Mahavir Asthan (Buxar Golumber). He has also shown boundary of the aforesaid PO. He has recorded statement of the witnesses. He has asked for document of the motorcycle from the accused, Santosh who had disclosed that all the relevant documents are available at his house. He has further admitted



that he has got no license for possessing Ganja. In para-4, he has stated that he had sent the seized article for examination, received the supervision note and then submitted charge-sheet. During cross-examination at para-5, he has stated that he was not a member of the raiding party and so, he was not present at the time of search and seizure. He was not knowing the accused since before. He has further stated that he was not entrusted to record inculpatory extra-judicial confessional statement of the accused but he has recorded the same as the accused volunteered. However, he admitted that he has not mentioned nor he has filed any petition before the Sessions Judge for recording statement of accused. He has further stated that he has incorporated under para-28 of the case diary that seized Ganja has been produced before court and then, it was sealed in a box and then, the same was sent to the FSL having marks S-1 and S-2. Rest of the Ganja was sealed and carrying mark 'A'. He has further stated that Ganja was not seized in his presence. He has further stated that over-writing in the seizure list with regard to registration no. of the vehicle was not done by him. Then there happens to be contradiction relating to relevant witnesses. Then has denied the suggestion that his investigation happens to be collusive one.



22. PWs-1, 2, 5 and 6 are the persons who were members of the party under leadership of informant, PW-3 engaged in vehicular checking and, during course of their evidence, it is evident that they all have substantiated the prosecution case. During course of cross-examination, it is evident that nothing incriminating has been at their end.

23. PW-9 is the formal witness who had exhibited the FLS report which ought not to be in the background of being the public document.

24. PW-4 and 7 are the seizure list witnesses who, though during course of their evidence, did not support the factum of recovery but, there happens to be admission at their end that their presence happen to be over all the relevant documents and exhibited the same.

25. At the present moment, the statement of the accused recorded under Section 313 CrPC is also to be taken note of. Accused, Santosh during course of statement has admitted that he was coming over motorcycle and Fulchand took lift having a bag. He was not knowing since before as to what was kept in the bag. He claimed the money. Fulchand during course of statement has disowned to have accompanied Santosh but admitted his presence over relevant document.



Furthermore, from the examination of both the DWs, it is evident that they are not at all over the lis.

26. Giving an analytical thought to the evidences available on the record in consonance with the relevant provisions of law, it is found and held that prosecution has succeeded in substantiating its case. Consequent thereupon, the instant appeal sans merit and is, accordingly, dismissed.

27. Appellants are under custody which they will remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

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