

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.677 of 2013

Arising Out of PS. Case No.-5 Year-2011 Thana- SAMASTIPUR GRP CASE District-
Samastipur

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Madhu Devi, wife of Ashok Singh, Resident Of Village- Benigiri, P.S.
Munger Muffasil, District- Munger, presently residing at village and P.O.
Jethuli, P.S. Fatuha, District- Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Prafull Chandra Jha, Advocate

Sri Amrit Anunay, Amicus Curiae

For the Respondent/s : Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 14-02-2019

1. The present appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) by the sole appellant. The appellant by judgment dated- 25.05.2013 has been held guilty and convicted for commission of offence under Section 20(B) (ii), (C) and



Section 22(c) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred to as the “N.D.P.S. Act”). By order dated- 31.05.2013 the sole appellant under Section 20(B)(ii) (c) of the N.D.P.S. Act has been sentenced to undergo rigorous imprisonment for fourteen years and to pay a fine of Rs. 100000/-. She has further been sentenced to undergo rigorous imprisonment for fourteen years and to a pay fine of Rs. 100000/- u/S 22 (c) of the N.D.P.S. Act. In case of default in payment of fine she has further been directed to undergo rigorous imprisonment for five years. All the sentences were directed to run concurrently.

2. Short fact of the case is that on 30.01.2011 Sub Inspector of Police - cum- I/C of S.I.T., Samastipur Camp Railway Station Ujiarpur namely- Pramod Kumar Singh (P.W. 5) recorded his self statement at Ujiarpur Railway Station at 20.50 Hours (8.50 P.M.). In the self statement the informant stated that on 30.01.2011 he received secret information from district Headquarter to conduct a raid and search in A.C. III Bogey in Chapra -Tata Express Train No. 18182 which was to pass through Ujiarpur Railway Station. After getting such information the informant reached Ujiarpur Police Station and at 19.45 (7.45 P.M.) and with Sub Inspector of Police of Ujiarpur Police Station namely Gopal Prasad Singh (P.W. - 6), Police Constable No. 765 Batar



Ram (P.W. 7), SAP Jawan No. 8789 namely Ramesh Kumar (not examined) and Jawan No. 8961 Kamlesh Kumar Singh (not examined) immediately proceeded for Ujiarpur Railway Station. A memo was given to Station Superintendent Ujiarpur Railway Station with intimation that in Chapra -Tata Express in A.C. III Bogey one female smuggler was travelling carrying illegal Ganja and as such search and seizure was necessary. At 20.18 Hours (8.18 P.M.) the train which was to go to Tata namely Chapra -Tata Express Train No. 18182 arrived at Ujiarpur Railway Station. The informant started conducting search in A.C. III Bogey with aforesaid police force and on the basis of description of the lady the appellant noticed a lady occupying seat no. 17. After being asked she became perturb. The informant asked the lady (appellant) that he wanted to search the luggage which was kept beneath the seat. It was one Aristocrat attache of Sky Blue Colour, two black hand bags, which were taken out regarding which she stated that it was her goods. On being asked about the articles kept in bags she shown her ignorance. Thereafter the informant came to conclusion that in the said closed bags some illegal articles were kept. On being asked, the lady, who was occupying seat no. 17 disclosed her name as Madhu Devi (appellant), W/o Ashok Singh, resident of village -Jethuli , P.S. :



Fatuha, District - Patna. On being strictly asked regarding the goods kept in attache and two bags in presence of number of passengers present in the said Coach and Police Officials she confessed that in the said bags there were six packets in which psychotropic substance Ganja was concealed. The informant tried to get search and seizure prepared in presence of passengers, however none came forward to become independent witness and since it was difficult to further detain the train he requested some of the persons of nearby area to become independent witness and the said lady was asked to get down and attache and bags were also brought down from the train at platform no. 2. In presence of two independent witnesses namely Birju Kumar (P.W. 2) and Sanjeet Kumar (P.W. 4) the apprehended lady was given option for search before the Magistrate. However she voluntarily agreed for search of those articles by the informant and with her consent in presence of aforesaid two witnesses informant started searching Sky colour attache and two black bags. From sky colour attache and two black bags, two separate packets each in the bags, total six packets, were recovered which were separately covered. After opening the same smell of Ganja came out and it was Ganja. Then the informant put mark on six packets like A-I, A-II, A-III, A-IV,, A-V and A-VI. The seized articles were got weighed in a



grocery shop of Pappu Kumar (P.W. 3) and on weighment total 43 Kilo 785 grams of Ganja was found. Each packets were containing about 7 Kilogram of Ganja. Weighment was done in presence of all the aforesaid persons. A certificate was given by the shop keeper namely: Pappu Kumar (P.W. 3) regarding the weighment over which the informant and others had put their signature. On being asked to produce papers regarding carrying of Ganja she did not give any satisfactory reply and as such the informant came to conclusion that appellant was a member of inter-State gang of smugglers of psychotropic substance Ganja. In presence of two independent witnesses seizure list was prepared. The apprehended lady disclosed that she was carrier of one Binod Singh of village - Bishunpur Aaho, Police Station - Sahebur Kamal, district- Begusarai and Tarkeshwar Ojha, resident of Tata (Jharkhand). The consignment was to be delivered to Tarkeshwar Ojha. She disclosed that on delivery of each consignment she was being paid Rs. 5000/-. Apart from that ticket and meal was also being provided by the accused persons. The informant further disclosed in his self statement that sample was prepared for sending Ganja for its chemical examination and it was kept in small six steel boxes in which 50 grams each Ganja was kept and sealed and it was accordingly numbered. The informant on the



basis of aforesaid fact came to conclusion that appellant (Madhu Devi) along with Binod Singh and Tarkeshwar Ojha was involved in transportation of Ganja and as such they had committed offences under Section 20(b) , 21(c), 22(c) and 29 of the N.D.P.S. Act. On the basis of said self statement dated 30.01.2011 on the next day on 31.01.2011 at 17.30 (5.30 P.M.) a formal F.I.R. vide Rail Samastipur P.S. Case No. 05 of 2011 was registered for offence under Section 20(B), 21(C), 22(C) and 29 of the N.D.P.S. Act against appellant and other two namely: Binod Singh and Tarkeshwar Ojha. After investigation on 25.04.2011 charge sheet was submitted in the Special Court against the appellant keeping investigation pending against others whereupon on 03.05.2011 learned Special Judge took cognizance of the offence and on 17.05.2013 charge under Section 20(b) (II) (C) of the N.D.P.S. Act was framed. Again on 21.05.2011 charge under Section 20 and 22 of the N.D.P.S. Act was framed against the appellant. Charge was read over and explained to the appellant by the Court to which she pleaded not guilty and claimed to be tried.

3. To substantiate its case in ocular evidence prosecution has examined altogether eight witnesses namely: Bhola Rai as P.W. 1, Birju Kumar, who happens to be seizure list witness as P.W. 2, Pappu Kumar (P.W. 3), Sanjeet Kumar, who happens to be



another seizure list witness as P.W. 4. Informant - Pramod Kumar Singh as P.W. 5, Gopal Prasad Singh as P.W. 6, Batar Ram as P.W. 7 and Investigating Officer – Shaligram Ram as P.W. 8. Prosecution also filed and proved some document by way of documentary evidence in the case.

4. Statement of accused was recorded under Section 313 of the Cr.P.C. The case of defence is complete denial of occurrence claiming her to be innocent. Accused also examined one witness namely- Manish Kumar Singh as D.W. 1 in buttress of his case.

5. After hearing the parties and perusing the record, learned trial court passed the aforesaid judgment and order of conviction and sentence as detailed in earlier paragraphs.

6. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the convict has preferred this Criminal Appeal.

7. The point for consideration in this case is as to whether the prosecution has been able to bring home the charge levelled against appellant beyond all reasonable doubts or not.

8. It is submitted by learned counsel for appellant that seizure list witnesses namely- Birju Kumar and Sanjeet Kumar have not supported the factum of search and seizure of the



contraband before them. As per P.W. 6 in paragraph 4 of his cross examination seizure list was prepared at platform no. 2. while in quite contradiction to the aforesaid statement of P.W. 6, P.W. 7 has stated in paragraph 5 of his cross examination that seizure list was prepared at grocery shop of Pappu Kumar where contraband was weighed. It is also submitted that neither in the self statement the informant nor any of the witnesses including the informant has whispered about giving their search by the informant and raiding party before the witnesses preceding to carrying out search of the attache and bags. It is also submitted that seized contraband was neither sealed by the seizing authority at the place of occurrence nor by the S.H.O. P.S. Rail after production of the said seized contraband at the P.S. as none of the witnesses examined by the prosecution has whispered about it. Thus the procedure of search and seizure and sealing has not been complied by the prosecution and it does not stand established and moreover testimonies of the witnesses do not indicate that sample from the aforesaid seized contraband was prepared either at the place of occurrence or at the P.S. Rail. Thus there is utter violation of the mandatory provisions of the N.D.P.S. Act. It is further submitted that confessional statement (Ext. 5) of the appellant has been recorded by the Police not on the date of occurrence rather on the following day



after about 24 hours and no explanation has been assigned for the aforesaid delay in recording the confessional statement of appellant. The aforesaid aspects of the case creates serious doubt about the sanctity of the aforesaid confessional statement of the appellant. Thus prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence the aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and appellant is entitled to be acquitted from all the charges levelled against her.

9. On the other hand learned Additional Public Prosecutor for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has supported the prosecution case in toto and other witnesses namely P.W. 6 and P.W. 7 who happens to be member of the raiding party have also corroborated the prosecution case and seizure list witnesses namely- P.W. 2 and P.W. 4 though have not supported the factum of the seizure of the contraband before them but they have identified their signature on the seizure list. Besides the aforesaid evidence there is



confessional statement of appellant marked as Ext. 5 and learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this Criminal Appeal is shorn of merit and is liable to be dismissed.

10. From perusal of the record it appears that P.W. 2 (Birju Kumar) and P.W. 4 (Sanjeet Kumar) happens to be seizure list witnesses of the case. But from perusal of their testimony it appears that P.W. 4 has turned hostile. Though the aforesaid witnesses have identified their signatures on the seizure list marked as Ext. 2 and Ext. 2/1 respectively but they have candidly denied the factum of recovery of any articles from the attache and bags of the appellant before them.

11. From perusal of the self statement of the informant and testimony of P.W. 5 - informant , P.W. 6 and P.W. 7 who happens to be members of the raiding party it appears that neither in the self statement nor in their testimony there is any whisper about giving search by the informant and the members of the raiding party of their person before the independent witnesses preceding to search of the attache and bags of the appellant. P.W. 6 in paragraph 4 of his cross examination has stated that seizure list was prepared at platform no. 2 while as per account of the P.W.



7 as given in paragraph 5 of his cross examination the said seizure list was prepared at the grocery shop of Pappu Kumar (P.W. 3), who has turned hostile, where the contraband was weighed. Record further indicates that the said contraband was seized on 30.01.2011 at 8.30 P.M. by the informant but the said seized contraband was handed over to the S.H.O. Rail P.S. Samastipur not on the same day by the informant rather on the following day on 31.01.2011 at 5.30 P.M. by S.I. Gopal Prasad Singh of P.S. Ujarpur. Albeit as per account of informant (P.W.5) as given in para 1 of his examination in chief he had handed over the seized contraband at the local P.S. on 30/1/2011 . Hence aforesaid aspects of the case creates serious doubt about the search and seizure of the aforesaid contraband from the possession of the appellant and sanctity of the seizure list and moreover the procedure of search and seizure has not been observed by the informant at the time of search and seizure of the alleged contraband from the possession of the appellant. Thus search and seizure of alleged contraband from possession of appellant does not stand established by the prosecution.

12. Albeit in the written statement informant has stated about preparation of sample from the seized contraband and sealing of the same at the time of its seizure but as per account of



the informant - P.W. 5 as given in paragraph 1 of his examination -in- chief after seizure and preparation of the seizure list he handed over the seized contraband and the accused to the local P.S. concerned on the date of seizure i.e. 30.01.2011. From perusal of the testimony of the witnesses including informant it appears that none of the witnesses has whispered about preparation of sample from the seized contraband for sending it to F.S.L. for its chemical examination by the seizing authority at the place of occurrence by the S.H.O. Rail P.S. at the time of receiving of the said contraband at the P.S. and moreover neither any sample or rest contraband were sealed at the aforesaid two places by the concerned Police Officer in utter violation of Section 55 of N.D.P.S. Act.

13. Offence punishable under the N.D.P.S. Act and punishment provided therefor is very stringent and stern, so the strict provisions have been provided in the said Act. So that there may not be chance of false implication. In such view of the matter, the compliance of the provision which are mandatory in nature has to be considered seriously and non-compliance of such requirement will give rise to grave doubt. Section 55 of the N.D.P.S. Act provides it as a mandatory requirement that after search and seizure, the seized article will be sealed by the officer,



who seized it and concerned Officer -in-Charge of the police station will take charge of the seized article. Section 55 of the N.D.P.S. Act further provides that in case sample of seized narcotic article is taken then the same will be sealed by person seizing it and the officer – in-Charge of the police station taking charge of the seized article. Thus, the basis and mandatory requirement of sealing of the article in view of provision of Section 55 of the N.D.P.S. Act has not been proved. The date and time of sealing of the article has also not been proved. Since any sealing of the article at the time of seizure has not been proved nor any exact date and time has been proved in taking of the sample by the seizing authority it gives rise to grave doubt. Hence, the appellant is entitled to benefit of doubt.

14. Though the said contraband in its chemical examination was found to be Ganja but from perusal of record it appears that the seized contraband without sealing and making sample from the same was sent to the court on 1/2/2011 alongwith accused and on the said date accused was remanded to jail custody and said contraband was returned to the concerned S.I. Thereafter again the said contraband was sent to the court on 26/2/2011 for drawing sample for sending it to F.S.L. for its chemical examination and the sample was drawn on 3/3/11 by



S.D.J.M., Samastipur vide order of Sessions Judge, Samastipur and handed over to concerned S.I. for its sending to F.S.L. Patna and Kolkata and from perusal of F.S.L. report marked as Exhibit – 6 it appears that the sample was received in the F.S.L. Patna on 10/3/2011. Thus it appears that the said contraband was kept open and unsealed for quite considerable period of 26 days i.e. from 30.1.2011, date of recovery to 26/2/2011, the date of finally producing before the court for drawing sample giving ample opportunity and sufficient time for tampering with it which creates serious doubt about sending of sample to the F.S.L. of that very contraband which was allegedly seized from possession of appellant. Thus prosecution has miserably failed to substantiate that the sample of that very contraband allegedly seized from possession of appellant was sent to F.S.L. for its chemical examination.

15. From perusal of record it appears that the appellant was apprehended by the informant on 30.01.2011 at 8.30 P.M. but her confessional statement marked as Ext. 5 was recorded on 31.01.2011 at around 8 P.M. i.e. after abnormal delay of one day and the prosecution has not assigned any plausible explanation for the aforesaid delay in recording confessional statement of the



appellant which creates serious doubt about the credibility and sanctity of the said confessional statement.

16. From perusal of the statement of appellant recorded under Section 313 of the Cr.P.C. it appears that the factum of giving confessional statement by the appellant before the Police has not been put to her enabling her to explain the same causing great prejudice to the appellant, hence in our considered opinion the aforesaid confessional statement of the appellant not put to her in her statement recorded under Section 313 of the Cr.P.C. cannot be considered against her.

17. On minute examination of aforesaid evidence, we are of considered opinion that prosecution has not been able to establish its case beyond all reasonable doubt and statutory provision contained in the N.D.P.S. Act was violated, and as such, it is a fit case for interference with the judgment of conviction and sentence. Accordingly judgment of conviction dated: 25.05.2013 and sentence dated- 31.05.2013 passed by Sri Panchanan Sharma, learned Special Judge – cum- 1st Additional District & Sessions Judge, Samastipur in N.D.P.S. Case No. 01 of 2011 arising out of Rail Samastipur P.S. Case No. 05 of 2011 is hereby set aside and appellant is acquitted from all charges. The appeal is allowed. Since appellant is in custody and judgment of conviction and



sentence has been set aside, it is hereby directed to release her forthwith, if not wanted in any other case.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23-02-2019
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