

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.705 of 2016

Arising Out of PS. Case No.-206 Year-1998 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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Ranjeet Kumar @ Manjeet Kumar Son of Sri Chandra Kishore Singh @ Bidio Singh resident of village - Hariharpur, P.O. Hariharpur, P.S. Pupari, District Sitamarhi.

... .. Appellant/s

Versus

1. State Of Bihar and Anr
2. The Union of India through Sinchit Prasad, Inspector of Customs, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Birendra Kumar, Mr. S.K. Lal, Advocates.
For the Respondent/s	:	Smt. Abha Singh, APP
For Union of India	:	Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

28-06-2019

Sole appellant, Ranjeet Kumar @ Manjeet

Kumar having been found guilty for an offence punishable under Section 20-b (ii) of the NDPS Act, sentenced to undergo RI for five years as well as to pay fine amounting to Rs. 50,000/-, in default thereof, to undergo RI for one year, additionally, vide judgment of conviction dated 23.06.2016 and order of sentence dated 28.06.2016 passed by 6th Additional Sessions Judge, Muzaffarpur in Custom Case No. 206/1998.

2. As is evident from the record, the case of the prosecution as per complaint filed by Sinchit Prasad, Inspector of Customs is that while he along with other Custom Officials were engaged in checking, found a person inside a bus in suspicious condition whereupon, searched out and during course thereof, Ganja has been found wrapped around his body. That



being so, that person was taken to Custom Office, Muzaffarpur where seizure list was prepared in presence of two independent seizure list witnesses after seizure of the Ganja weighing two kilograms. Interrogated upon in presence of Assistant Commissioner, Customs. There happens to be further divulgence that some part of the Ganja has been taken out from the stock (weighing 2 Kilograms) and the same was sent to Gazipur for examination.

3. It is further evident from the records that cognizance of an offence punishable under Section 23 of the NDPS Act for violation of Section 8 of the NDPS Act was taken vide order dated 04.04.1999 and then thereafter, the witnesses before charge were examined on respective dates i.e., PW-1 on 09.09.1999, PW-2 on 20.12.2006 and PW-3 on 07.05.2007. Thereafter, on 05.11.2007 charge has been framed under Section 20-b (ii) of the NDPS Act and then, witnesses were recalled for cross-examination, PW-2 was discharged on 01.12.2007 while PW-1 and PW-3 on 08.08.2008. It is further evident that record was transferred to the court of 9th Additional Sessions Judge where FSL report was exhibited vide order dated 12.08.2011 being as public document. After passing over so many dates, all of a sudden, on 17.08.2012, charge has been re-framed under



the aforesaid Section and then, Sinchit Prasad who was earlier examined as PW-2, has been examined as PW-1 and D.P. Gupta who was examined as PW-1, has been examined as PW-2. Thereafter, the case has been closed, statement of the accused has been examined and then, after hearing learned respective counsels of both the parties, the judgment impugned has been passed.

4. After going through the same, it is evident that it is based upon the post stage of event dated 17.08.2012 on which date the charge has been re-framed and two witnesses, namely, Sinchit Prasad and D.P. Gupta have been examined.

5. 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.

6. From the record, it is evident that inception of instant proceeding happens to be under the Customs Act. That happens to be reason behind filing of complaint. That means to say, first of all, witnesses before charge are to be examined, followed with charge, and then witnesses are to be recalled for cross-examination. And that happens to be reason behind examination of three witnesses before charge followed with framing of charge, recalling all those witnesses for further cross-



examination who, accordingly, were cross-examined on successive dates discharged. Then as to how a new charge has been framed and two witnesses have been examined without having any explanation in the order-sheet dated 17.08.2012 is a matter of surprise. Had there been an effort in accordance with Section 216 or 217 of the CrPC, the matter would have been otherwise, that too, the witnesses would have been recalled but no such activity is there. Rather, from perusal of the same, it is evident that the same happens to be a new germane burying the evidence whatsoever adduced and available on the record. It is also evident from the order dated 17.08.2012 that learned lower court did not care event to see the earlier orders.

7. The evidence so recorded by the court at earlier part, has completely been ignored by the learned lower court in the judgment impugned. Even, in worst case, the learned lower court should have explained that earlier trial was illegal, in contravention of law, would have observed that the prosecution should not have been in accordance with Customs Act, then in that circumstance, the whole prosecution would have allowed to be washed away. But, absence thereof, speaks otherwise. Moreover, the lower court traced out that complaint petition to be the source of prosecution. That means to say, the



activity by way of framing of charge dated 17.08.2012, examination of two witnesses, Sinchit Prasad as PW-1 and D.P. Gupta as PW-2 was certainly not in accordance with law and so, the subsequent steps including the judgment impugned.

8. Now coming to the facts of the case, less said is better. Irrespective of the fact that from the record, it is gathered that vide order dated 06.10.1999, the prosecution had taken steps in accordance with Section 52A (2) of the NDPS Act but during course of trial neither the sample nor the certificate has been made an exhibit. That means to say, there happens to be neither material exhibit nor the certificate of destruction. Furthermore, it is evident from the evidence of PW-1, PW-2 and PW-3 that the appellant was intercepted from a bus and, during course of interception, he was searched out and Ganja was found wrapped along with his body. Then in that circumstance, there should have been proper application, compliance of Section 50 of the Act which, in the case of *Vijaysinh Chandubha Jadeja v. State of Gujarat* as reported in (2011) 1 SCC 609, had decided. Admittedly, the search operation was carried out by the Non-Gazetted employee of the Custom Department, and as is evident from their evidence, had not offered the accused to be searched in presence of Gazetted officer.



There also happens to be violation of Sub-section 2 of Section 42 of the Act as, prosecution could not be able to furnish the relevant document to justify that even belatedly, the informant was given to the Superior Officer. Again the Constitution Bench in *Karnail Singh v. State of Haryana* reported in (2009) 8 SCC 539 explained the issued that delayed compliance is permissible but, non compliance is not permissible.

9. Furthermore, none of the seizure list witnesses have been examined and those have got relevance in the background of the fact that there happens to be consistency in the evidence of all the three witnesses that after seeing Ganja wrapped around the body of the accused, he was de-boarded and then taken to Custom office at Muzaffarpur where seizure list was prepared and that is a circumstance, which cast a doubt.

10. At the present moment, it has been submitted at the end of learned Counsel, Union of India that inculpatory extra-judicial confessional statement of the appellant before the Custom Officials is admissible in the eye of law, more particularly, when the Customs officials, are not identified to be police officer. So, conviction could be recorded on that very score alone, is found not at all tenable in the background of the fact that during course of statement under Section 313 CrPC, the



aforesaid incriminating material has not been confronted to him along with the infirmities persisting on record as indicated hereinabove.

11. Consequent thereupon, the judgment impugned would not survive. As such, the same is set aside. Appeal is allowed.

12. Since, appellant is under custody, he is directed to be released forthwith if, not wanted in any other case.

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(Aditya Kumar Trivedi, J)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02.07.2019
Transmission Date	02.07.2019

