

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1598 of 2017**

**In
CRIMINAL APPEAL (DB) No.219 of 2017**

Arising Out of PS. Case No.-119 Year-2014 Thana- LADANIA District- Madhubani

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Jitan Singh son of Harihar Singh resident of Village-Kamepatti, PS-
Babubarhi, District-Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mahendra Thakur, Mr. Surendra Kishore Thakur, Mr. Subodh Kumar, Mr. Vijay Kumar, Advocates.
For the Respondent/s	:	Mr.Sri Binod Bihari Singh

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

04-07-2019

Sole appellant, Jitan Singh on account of having

been found guilty for an offence punishable under Section 20-b
(ii) (c) of the NDPS Act, and sentenced to undergo RI for ten
years as well as to pay fine appertaining to Rs. I,00000/- (One
Lac)-, in default thereof, to undergo SI for six months,
additionally, vide judgment of conviction dated 10.01.2017 and
order of sentence dated 17.01.2017 passed by 1st Additional
Sessions Judge-cum-Special Judge, Madhubani in Trial No.
11/2014 arising out of Ladaniya PS Case No.119/2014, has
challenged the same under instant appeal.

2. Informant, Sanjay Kumar No.1 (PW 1) O/C
of Ladaniya PS recorded his self statement on 22.09.2014



depicting therein that while he along with other police personnels were on patrolling, he received confidential information with regard to storage of Ganja at the place of, Jitan Singh of Village-Khanjedih. Furthermore, it has also been incorporated that the Inspector of SSB, Daljit Singh also met with him and disclosed regarding illegal storage of Nepali Ganja by the aforesaid Jitan Singh whereupon, informant along with Daljit Singh as well as other police personnel proceeded. After reaching at village-Khanjedih, gone to the house of the accused, till then, the local CO also arrived and then, thereafter, they made raid at the house of the accused and during course thereof, 26 Kilograms of Ganja having been kept in a plastic bag beneath a Chowki was seized, weighed for which seizure list was prepared in presence of two seizure list witnesses, namely, Arun Singh and Pravin Kumar Raut, accused was taken into custody. Thereafter, they left for police station, where investigation was handed over to one B.K. Tripathi after registration of Ladaniya PS Case No.119/2014. As is evident from the record that investigation commenced and during course thereof, investigating officer, B.K. Tripathi was transferred succeeded by one Indradeo Das who got the sample examined and then, after completing the investigation, submitted charge-



sheet, facilitating the trial, meeting with its ultimate result, subject matter of the instant appeal.

3. 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. Further, nothing has been adduced in defence.

4. Altogether six PWs have been examined on behalf of prosecution in support of its case who are PW-1, Sanjay Kumar, PW-2, Abhimanyu Kumar Sharma, PW-3, Bhupendra Kumar Tripathi, PW-4, Inspector Daljit Singh, PW-5, Indradeo Das, PW-6, Dukhni Devi. Side by side, has also exhibited Ext-1, Seizure List, Ext-2, self statement, Ext-3, Formal FIR, Ext-4, Charge-sheet, Ext-5, FSL report. As stated above nothing has been adduced on behalf of defence.

5. Heard learned counsel for the appellant as well as learned APP, also gone through the records.

6. Times without number, even serving a copy of the judgment upon the learned Advocate General, the State has been requested to equip the police officials with regard to the niceties of the NDPS Act in order to save not only the society rather future of the nation at the hands of unscrupulous persons who are engaged in getting the youngsters/future of the nation



prone to addiction as incompetency during course of investigation by way of non following the mandate of law, strictly, ultimately, allow to culprit to go scot-free but, went in vain, and that happens to be the reason behind that irrespective of so alleged recovery of huge quantity of narcotic substance, are of no consequence under judicail consideration. This case happens to be one of the glaring example. As such, in order to ring the alarming bell expecting the State to have proper, cautious approach at least with regard to the offences under NDPS Act, a copy of the judgment should be served upon the learned Advocate General, Bihar, Patna.

7. Now coming to the facts of the case, it is evident that more or less there happens to be consistency over conducting raid at the house of the appellant, Jitan Singh, recovery of 26 Kilograms of Ganja from a plastic bag kept beneath a Chowki, but due to non compliance of mandatory provision of law, that has gone fruitless and those are:- (a) from the evidence available on the record, it is apparent that neither sample was prepared at the spot, nor Ganja was sealed at the spot. Even giving relaxation on that very score to some extent, there happens to be no evidence at the end of the prosecution that Ganja was ever sealed even at the police station before



depositing it to Malkhana and in likewise manner, preparation of samples, (b) two alleged seizure list witnesses, namely, Arun Singh and Pravin Kumar Raut have not been examined and for that, no explanation is there. Likewise the status happens to be relating to CO, (c) as per evidence of PW-5, part IO paragraph-2 (Examination-in-chief) he sent seized Ganja for FSL examination after getting permission from the District and Sessions Judge. From para-1, it is evident that he took charge of this case on 10.11.2014. There happens to be no disclosure at his end from where he got the Ganja and how the sample was prepared. Though, during cross-examination at para-8, he has stated that he received charge relating to the case diary as well as material exhibit. However, in para-8 admitted that there happens to be no description in the case diary with regard to receipt of the material exhibit. In para-13, he has further stated that after going through the case diary, he found that the weight, type of sample, mark so put thereupon have been mentioned in the seizure list. Seizure list is Ext-1 and after perusal of the same, it is evident that no such type of description has been made. The aforesaid eventuality is further found explained by the informant, PW-1, (Para-10) who has simply stated that he handed over the relevant papers along with material exhibit to



the Investigating Officer after registration of the case.

8. The more interesting feature is that he has admitted that in the case diary, there happens to be no description with regard to storage of the recovered Ganja in the Malkhana. He has further stated that those things are mentioned in the station diary but reason best known to the prosecution, the same has not been produced. In likewise manner, at para-23, he has further admitted that in the case diary there happens to be no description with regard to handing over the seized Ganja to the IO but, again clarified that the same is incorporated in the station diary. In para-24, he admitted that there happens to be no description with regard to sealing.

9. That being so, there happens to be clear-cut violation of Order No. 1/88 and 1/89. Apart from this, from FSL report, it is evident that the so alleged sample was sent to the FSL vide letter no. 1411 dated 05.11.2014 through Special Messenger but the aforesaid packet was received at the office of FSL on 29.11.2014, that means to say, after 23 days and for that, no explanation is there at least with regard to custody of the aforesaid packet during intervening period.

10. Furthermore, it is also apparent from the evidence of PW-1 as well as PW-5 that no effort has been taken



at their end to inform the Superior Officials in accordance with Section 57 of the NDPS Act. It is further evident that so alleged seized Ganja has not been produced during trial before the Court. There happens to be no evidence on the record with regard to its destruction in accordance with 52A of the Act and that being so, the custodian of the seized Ganja in terms of Section 55 of the NDPS Act as properly identified, happens to be the Officer Incharge. For better appreciation, the same is quoted hereinbelow:-

“ Section -55. Police to take charge of articles seized and delivered. An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station”.

11. Even then the non-production thereof, appears to be serious flaw consisting in the prosecution case. Earlier view in *Vijay Jain v. State of Madhya Pradesh* as reported in (2013) 14 SCC 527 has been reiterated recently by the Apex Court in the case of *Mohinder Singh v. State of Punjab* reported in AIR 2018 SC 3798 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. Apart from this, complete ignorance of Section 57 of the NDPS Act and additional circumstance when it is taken into consideration in the background of deficiency persisting in the prosecution case on account of non sealing of the seized Ganja at the spot, non preparation of sample at the spot, no evidence with regard to sealing, sampling and the manner whereunder the so alleged sample has been sent to the FSL, coupled with the aforesaid deficiency in its totality, did not justify prevalence of the judgment impugned.

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

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

15. A copy of the instant judgment should be served upon the Advocate General, Bihar, Patna expecting some positive steps at the end of the State in getting the Investigating Officer properly versed with the niceties of the NDPS Act in



order to avoid serious lapses at the end of prosecuting agency.

(Aditya Kumar Trivedi, J)

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