

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.350 of 2018**

Arising Out of PS. Case No.-143 Year-2015 Thana- BIHIA District- Bhojpur

Indradev Singh S/o Late Mukhram Singh, R/o Village- Makdumpur, P.S.-
Bihiya, District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Arbind Kumar Singh, Adv
For the Respondent/s : Mr. Zeyaul Hoda, APP

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

18-07-2019

Sole appellant, Indradev Singh 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 appertaining to Rs. 25,000/-, in default thereof, to undergo SI for six months, vide judgment of conviction dated 05.12.2017 and order of sentence dated 11.12.2017 passed by 2nd Additional Sessions Judge-cum-Special Judge NDPS, Bhojpur, Ara relating to NDPS case No. 06/2015 arising out of Bihiya PS Case No. 143/2015.

2. Siddeshwar Kumar Dubey (PW 4) O/C of Bihia PS recorded his self statement that after constituting a raiding party, raid was conducted at the place of an accused of Gandhi Maidan PS Case No. 483/2013 at village Makhdumpur and during course thereof, it has been alleged that both the



accused, namely, Indradev Singh as well as Guddu Singh managed to escape. House of both the accused were searched and during course thereof, nothing has been recovered from the house of Guddu Singh while from the house of Indradev Singh, five kilogram of Ganja has been recovered. Because of the fact that none of the villagers became ready to be a seizure list witness, on account thereof, two Chowkidars who were members of the raiding party, namely, Gupteshwar Ram and Nandji Ram stood as seizure list witness. A copy of the seizure list was tendered before the family members who declined to accept the same.

3. After registration of Bihia PS Case No. 143/2015, 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 five PWs have been examined on behalf of prosecution in support of its case who are PW-1, Paras Nath Pandey, PW-2, Nandji, PW-3, Gupteshwar Ram, PW-4,



Siddeshwar Kumar Dubey, PW-5, Radha Mohan Singh, Part I.O. Side by side, has also exhibited Ext-1, Signature of PW-2 over seizure list, Ext-2, Seizure List, Ext-3, Self Statement, Ext-4, Charge-sheet, Ext-5, FSL report, Ext-6, report of Chemical Laboratory, Custom House, Kolkata. 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 record.

7. From the record, it is evident that PW-3, Gupteshwar Ram had disowned his presence over the seizure list. Though, there happens to be disclosure at the end of the informant in the self statement that a copy of seizure list was tendered to the female folk who declined to accept a copy thereof. But, no such statement is found during trial over any endorsement to this effect is found over seizure list, Ext-2. Furthermore, it is also evident from the evidence of all the witnesses, more particularly, that of PWs-4 and 5 that they have not spoken a word with regard to preparation of samples. They have not spoken a word whether seized articles were sealed at the spot or not. PW-4, informant had not disclosed that after entrusting investigation, he had handed over seized articles in a sealed condition to PW-5 nor he had spoken a word whether it



was deposited in the Maalkhana. In likewise manner, PW-5 had not stated during his examination in chief concerning the same but during cross-examination at para-11, he had stated that relevant documents along with seized articles were handed over to him at the time of entrustment of the investigation but, that conduct became suspicious in the background of the disclosure having in para-12 that he had not mentioned the same in the case diary. At para-15, he had stated that he had seen the seized article through his naked eye which he found sealed but again admitted that there happens to be no disclosure in the case diary. Apart from this, as perceived, none of the PWs has claimed identification of appellant in dock and on account thereof, the major substantive evidence is found lacking.

8. Apart from this, it is evident that he has not disclosed the fact where he kept the seized article after having been entrusted to him, more particularly, when he stated that on 31.08.2015 as he has been transferred and had handed over the investigation of this case to Madhav Tiwari, ASI. Madhav Tiwari has not been examined. From his evidence, it is evident that he had not prepared samples upto 31.08.2015. When Ext-5 and 6, respective FSL reports have been gone through, it is evident that the order of the Sessions Judge was procured on



29.09.2015, that means to say, after expiry of more than four months without any cogent reason. Furthermore, it is also evident from the evidence of the PWs that neither there happens to be compliance of Section 52A of the NDPS Act nor under Section 42(2) of the NDPS Act nay, the material exhibit has been produced in the court.

9. The Hon'ble Apex Court times without number has observed that having stringent in nature the mandate of the NDPS Act is to be strictly followed. Moreover, how the seizing, sampling of narcotic drugs and psychotropic substances are to be carried out is found duly explained under Order No. 1/88, 1/89.

10. Recently, 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.

11. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.



12. 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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