

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.456 of 2016

Arising Out of PS. Case No.-96 Year-2014 Thana- PALANWA District- East Champaran

Ramjee Chaudhary S/o Late Rameshwar Chaudhary R/O Village-Ward No. 2,
Hasanpur Road, P.S.-Hasanpur, District- Samastipur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shiva Shankar Sharma, Adv.
For the Respondent/s : Ms. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 21-11-2019

Appellant Ramjee Chaudhary has been found guilty for an offence punishable under section 20(b)(ii)(B) of the N.D.P.S.Act and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.1,00,000/- and in default thereof, to undergo R.I. for two years additionally, under section 23(b) of the N.D.P.S.Act and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.1,00,000/- and in default thereof, to undergo R.I. for two years additionally, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 2.6.2016 passed by the Sessions Judge/ Special Judge, East Champaran, Motihari in connection with N.D.P.S.Case No. 62/2014 arising out of Palanwa P.S.Case No. 96/2014.



Janak Singh (P.W.1), Head Constable of SSB filed a written report on 7.9.2014 to the effect that after getting confidential information with regard to passing of a person having in possession of narcotic substance, they ambushed and during course thereof, they found a person having resemblance as per disclosure made by the spy, intercepted and then, was disclosed that on account of confidential information relating to carrying of Ganja by him, he is to be searched and for that, he has got an option to be searched in presence of a Gazetted Officer/ Magistrate, whereupon the aforesaid person gave his nod to be searched by the SSB personnel, whereupon in presence of two independent witnesses Sant Lal Yadav (not examined) and Chandeshwar Mahto (not examined) he was searched and during course thereof, from a Jhola full of flattened rice two packets were searched out which was found to be Ganja as per detection kit. Accordingly, necessary documentation have been done by him. The apprehended person disclosed his identity as Ramjee Chaudhary, son of late Rameshwar Chaudhary of village and post Hasanpur road, Ward No.2, P.S. Hasanpur, District Samastipur. Then thereafter, the person alongwith Ganja, relevant documents so prepared therewith have been produced before the Officer In-charge, Palanwa who, on account thereof, prepared production



cum seizure list relating to Ganja in presence of two independent witnesses, Manjur Alam and Bharat Rai (not examined), though case has been registered on the basis of the written report furnished by Janak Singh.

After registration of Palanwa P.S.Case No. 96/2014, investigation commenced and concluded by way of submission of charge sheet, facilitating the trial, meeting with ultimate result, subject matter of the instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under section 313 Cr.P.C. is that of complete denial. However, nothing has been adduced in defence.

In order to substantiate its case altogether 5 P.Ws. have been examined on behalf of the prosecution, who are Janak Singh, Ajay Kumar, Vijay Bahadur, Santosh Prasad and Uday Pratap Twiary. Side by side prosecution has also exhibited Ext. 1 series signature of respective witnesses over the relevant documents, Ext.2 formal F.I.R., Ext.2/1 endorsement over written report, Ext.3 FSL report. As stated above, nothing has been adduced on behalf of the defence.

Heard learned counsel for the appellant as well as learned A.P.P. Gone through the records.



From perusal of the record, it is evident that P.W.1 to 4 are the SSB constable who, during course of their evidence substantiated the factum of recovery of 7 Kgs. of Ganja from a Jhola having possessed by the appellant Ramjee Chaudhary full of flattened rice but, none of them have stated that the Ganja was sealed at the spot, sample was prepared at the spot. Not only this, there happens to be consistent version at their end including disclosure having in the written report that from the place of occurrence, the accused was taken to the office of SSB where paraphernalia was completed but at that place also neither sampling nor sealing was done. Then it was produced before the Officer In-charge Palanwa who had prepared production cum seizure list. That Officer In-charge has not turned up to depose at least on the score that the sampling and sealing was done before registration of the case or after registration of the case, at the relevant juncture.

P.W.5 is the I.O. He has simply stated that after registration of the case, investigation was entrusted to him by the Officer In-charge. At para-8 he has simply stated that during course of investigation, he filed a petition before the court concerned with a prayer that a permission be accorded to get the seized Ganja examined by the FSL at Patna as well as Kolkata and



after getting permission, he got the sample placed before the FSL, Patna, Kolkata. From his examination-in-chief it is evident that he has not disclosed with regard to custody of Ganja during intervening period and further whether sample of Ganja was prepared in presence of the court, it was sealed before the court, in likewise manner whether it was prepared and sealed at his instance at the police station. During cross-examination at para-21 he has stated that from both the packets sample were taken out. Specific mark were put thereupon. P.S. case number has been ascribed thereupon. After keeping sample in a tinned box it was sent to the FSL for examination and report is on record. It is also evident from Ext.3 FSL report that the same was transmitted vide Memo No. 210 dated 18.11.2014 through Special Messenger Driver cum Constable 840 Ashok Paswan which was received at the office on 27.11.2014 and for that, there happens to be no explanation at the end of the prosecution more particularly by P.W.5 where and in whose custody sample was during intervening period.

From the record it is further evident that the prosecution has not furnished an information with regard to destruction of Ganja in accordance with section 52A of the N.D.P.S.Act. That being so, alleged seized Ganja should have been produced before the court as a material exhibit more particularly, in the background



of nature of evidence having adduced at the end of the prosecution. Recently in the **State of Rajasthan vs. Sahi Ram**, reported in AIR 2019 SC 4723, it has been held that even if the prosecution failed to produce material exhibit in the court but, recovery is found duly substantiated by the evidence having otherwise produced before the court then in that circumstance, non-production of material exhibit would not cause dent in the prosecution case but where evidence happens to be sketchy then in that circumstance, material exhibit has to be produced in court and that happens to be consistent finding of the Apex Court as held in **Vijay Jain vs. State of Madhya Pradesh**, reported in 2013(14) SCC 527 and more recently in **Mohinder Singh vs. State of Punjab**, reported in AIR 2018 SC 3798.

Consequent thereupon, judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Appeal is allowed. Appellant is under custody, whereupon is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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