

Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA 189 of 2021

Ajmira Bibi

-vs-

The State of West Bengal

For the appellant: Ms. Sreyashee Biswas

For the State: Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

Heard on: **18.11.2022 & 20.12.2022.**

Judgement on: **20.12.2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred against the judgement and order of conviction and sentence dated 18-02-2021 & 19-02-2021 wherein the learned Additional Sessions Judge, 4th Court, Alipore in Sessions Trial No. 2(7)2017 arising out of Sessions Case No. 1(3)2017 convicted the appellant under Section 21(b) of the N.D.P.S Act and sentenced her to suffer rigorous imprisonment for six years and fine of Rs.50,000/- in default to undergo simple imprisonment for a further term of six months.

The genesis of the case arose out of Thakurpukur P.S. Case No. 416 dated 1.12.2016 which was initiated pursuant to a complaint lodged by one Sadhan Mondal, SI of Police, Narcotic Cell, DD, Lalbazar to the Officer-in-Charge, Thakurpukur P.S. Calcutta.

The sum and substance of the allegations were to the effect that a female person was walking down through the western side of Diamond Harbour Road from north to south direction carrying a black colour polythene bag in her right hand when she was detained with the help of the raiding team in front of a shop named Dream Car Seat Cover, 210, Diamond Harbour Road, PS Thakurpukur, Kol-63.

The raiding team disclosed their identity. The detainee divulged her identity as Ajmira Bibi. She was offered a written option informing her legal right to be searched in presence of a learned Magistrate or a gazetted Officer. She agreed to be searched at the spot in presence of a gazetted officer and refused to go anywhere else. As the complainant could not find any gazetted officer in and around the vicinity, he informed his superior officer and at about 13.30 hrs., Inspector Ananda Swarup Nayek, Additional O/c. Thakurpukur P.S came to the spot in uniform. The Inspector was introduced to the detainee and the witnesses and a second option was offered to the detainee who reconfirmed to be searched on the spot in presence of the gazetted officer. The detainee also searched the officer, however, except the personal belonging of the officer, nothing could be recovered.

Thereafter, the lady constable, Smt. Shipra Ghosh of narcotic cell searched the detainee, Ajmira Bibi and in presence of all the witnesses, certain articles were found, which have been referred to in the seizure list dated 01.12.2016. The black colour polythene bag, which she was carrying in her right hand was also opened and some powder/some granular substance was taken out which were described as 6(i) and 6(ii) and examined with the help of testing kit. The sample responded positive to the test of heroin. The total weight of the heroin in the weighing machine was found to be 53.5 gram. There was a cash seizure of Rs.350/- having denomination of Rs.10 X 30 and Rs.10 X 5. The detainee failed to give any satisfactory explanation regarding the contraband/heroin so recovered and as such she was arrested. All the articles which were found from the possession of the accused were seized under an appropriate seizure list dated 01.12.2016. The articles were packed, labelled and sealed with markings as 'A', 'B' and 'C'. The said seizure list and the labels were signed/inserted LTI by the witnesses. The complainant thereafter went to Thakurpukur Police Station along with the accused person, raiding team, seized items, seizure list and other documents which were prepared by him and handed over the same to the Officer-in-Charge of the Police Station with a request to prepare an inventory list as per provisions of the N.D.P.S Act.

A complaint was submitted with a request to register a case under the relevant provisions of the N.D.P.S Act for being initiated against the arrested Ajmira Bibi. Consequently, Thakurpukur P. S. case no. 416 dated 01.12.2016 was registered for investigation under Section 21(b) of the N.D.P.S Act. The Investigating Agency on completion of investigation submitted chargesheet.

The charge in this case was framed on 26th July, 2017 under Section 21(b) of the N.D.P.S Act and the prosecution in order to prove its case relied upon 8 witnesses which included P.W.1, Amal Kumar Dhar, Dy. Director, Directorate of Drug Control, K.I.T Building, Kolkata who was posted as Director, State Drug Control and Research Laboratory on 06.12.2016. The said witness identified the relevant material exhibit as also the test report and the forwarding memo bearing his signature.

P.W.2, Sadhan Mondal, the S.I of Police who received the information and reduced the same in writing, forwarded the same for the purposes of obtaining permission with signature of the Narcotic Cell, DD. The said document which was written by him was marked as Ext.-3. The witness also identified the permission letter which was marked as Ext-4. The first option which was offered was marked as Ext.- 5, the second option which was offered was marked as Ext.- 6. The entire seizure list was marked as Ext- 7. The arrest memo was marked as Ext. – 8 and the inspection memo which was signed by him

was marked as Ext-9 and the complaint which was placed before the Officer-in-Charge, Thakurpukur P. S. was marked as Ext-10. The witness also identified the report submitted in relation to the arrest and seizure to the Assistant Commissioner, Narcotic Cell, which was signed by him and the same was marked as Ext. – 11.

P.W. 3 is the SI of Police, Raghunath Mondal who was sub-Inspector of police attached to Thakurpukur Police Station. He identified the endorsement and signature on the written complaint by the Officer-in-Charge, Thakurpukur PS which was marked as Ext. 10/1. The witness also identified the formal FIR which was prepared and signed by him and the same was marked as Ext-12. The retention prayers relating to seized articles as well as the detention of the accused were marked as Ext 13 and 14. The attested copy of the general diary register, malkhana register and the lock-up register were marked as Ext-15, Ext16, Ext 17.

P. W. 4 is lady ASI, Sipra Ghosh, who was a member of the raiding team. The witness narrated the incident, which followed on 01.12.2016 relating to the search, seizure and arrest in respect of the contraband. The witness also narrated regarding the quantum which was seized and the mode and manner in which the weight of the contraband was taken. The documents earlier referred to relating to the seizure list, option, arrest memo and inspection memo were also identified by the witness and marked as Ext. 5/1, Ext. 6/1, Ext. 7/1,

Ext.8/1 and Ext. 9/1. The witness stated that after whole operation was conducted and completed, the arrested accused along with the alamats, seizures and documents which were prepared at the place of occurrence were taken to Thakurpukur P.S and were handed over by P.W2 to the Officer-in-Charge, Thakurpukur PS.

P.W. 5, Tarun Sardar, is an independent witness who was shown Ext.5, 6 & 7. He identified his signatures which were subsequently marked as Ext. 5/2, 6/2, 7/2 and Ext. 7/3 respectively. The witness also identified the accused in court.

P.W. 6, Avijit Mondal is also an independent witness, who was shown the seizure list and the documents relating to the options. He identified his signatures therein which were marked as Ext. 5/3, Ext. 6/3, Ext. 7/3 & Ext. 7/4 respectively. This witness also identified the accused in court.

P.W. 7 is the Inspector, Ananda Swarup Nayak. This witness is the gazetted officer who supervised the search and seizure which was conducted on the relevant date. This witness narrated the procedure adopted on the said date and also identified his signature in the seizure list which were marked as Ext. 7/5 and Ext.7/6 respectively. This witness also identified his signature in the second option which was marked as Ext. 6/4. The witness also deposed that he while leaving the police station and arriving/returning at the police station informed the same which was incorporated as general diary entry nos. 49 and 106.

Both the general diary entries were produced in court, identified by him and marked as Ext. nos. 18 and 19.

P.W. 8 is Chandiprassanna Das, SI of Kolkata Police and at the relevant point of time was attached to Narcotic Cell, Lalbazar. He is the second Investigating Officer of the case who was given charge of Thakurpukur Police Station Case No. 416 dated 1.12.2016. Pursuant to the order of the DC DD, he took up the investigation of the said case which was entered into the general diary register. The relevant G.D entry no. 279 dated 03.12.2016 was produced before the court and marked as Ext.-21. This witness also deposed that he signed on the malkhana register which was marked as Ext.-16/1 and the lock up register which was marked as Ext.-17. The requisition which was placed at the malkhana of Thakurpukur PS was marked as Ext.22 and the document which was prepared in the computer with the signature of the witness was marked as Ext. 23. This witness stated that during his period of investigation, he did not examine any witness, but he visited the place of occurrence, received report from the SDCRL on 31.01.2017, consulted with his superiors and submitted chargesheet against the present accused.

Ms. Biswas, learned advocate appearing for the appellant submits that there were non-compliance of the relevant provisions of law, particularly with regard to the Sections 50, 52A of the N.D.P.S Act. It has also been submitted that the independent witnesses who have

been produced by the prosecution were chance witnesses and they were tutored, pursuant to which they have made their deposition before the court. Learned advocate has also questioned the written options which were offered to the appellant and submitted that the petitioner was unaware regarding the language in which she was offered the option. Learned advocate submitted that having regard to the deviations which are appearing in this case, the very foundation of the conviction passed by the learned trial court is questionable and as such the same should be set aside.

Mr. Roy Chowdhury, learned advocate appearing for the State resisted such submissions of the appellant/petitioner and contended that the Investigating Agency adhered to the very basics of the provisions of the N.D.P.S Act. The recovery of the contraband from the possession of the accused could not be brushed aside and except routine denial, the defence could not rebut the prosecution evidence as a whole. Learned advocate insists on affirming the order of conviction and sentence so passed by the learned trial court.

I have considered the submissions of the rival parties and I find that the prosecution case is consistent from the very inception with respect to the permission granted to the raiding team, the apprehension of the present appellant who was carrying a black polythene bag, the option offered for searching on the first occasion as also on the second occasion after arrival of the gazetted officer, the recovery of 53.5 gram of

heroin from the black polythene packet. The corroboration of the independent witnesses in this case is an additional feature. Further, expert P.W. 1 has confirmed regarding the presence of heroin in the contraband which was recovered from the possession of the present appellant.

Having considered the chronology of events leading to the seizure which was in compliance with the provisions of N.D.P.S Act, I am of the opinion that the order of conviction and sentence so awarded by the learned trial court cannot be interfered with. As such, the finding of conviction and guilt by the learned trial court is hereby affirmed.

However, having regard to the plea taken up by the appellant before the learned trial court that she is married and having four children including a daughter and the fact that she was arrested on 01.12.2016 and was in custody till 11th August, 2021 which is about four years and nine months, I am of the view that the sentence so imposed is reduced to the sentence already undergone and suffered by the appellant till date i.e., four years 11 months as stated above. If she is not wanted in any other case, she may be set at liberty.

Accordingly, the present appeal being CRA 189 of 2021 is partly allowed.

All pending connected applications, if any, are consequently disposed of.

Department is directed to send back the lower court records forthwith.

All parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

[Tirthankar Ghosh, J]