

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Mr. Justice Joymalya Bagchi

And

The Hon'ble Mr. Justice Bivas Pattanayak

C.R.A. 502 of 2014

Alauddin Sk. @ Helal @ Helu

Vs.

State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.
Mr. Debangana Bhattacharjee, Adv.
Ms. Swarnali Saha, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.

For the NCB : Mr. Pritam Roy, Adv.

Heard on : 06.04.2022

Judgment on : 06.04.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 25.04.2014 and 28.04.2014 passed by the learned Additional Sessions Judge and Special Court under N.D.P.S. Act, 6th Court at Barasat, North 24-Parganas in Case No. N-179 of 2006 convicting the appellant under Sections 18(b), 18(b) and 15(c) of the N.D.P.S. Act and sentencing him to suffer rigorous

imprisonment for a period of ten years and to pay a fine of Rs. 1,00,000/-, in default, to suffer rigorous imprisonment for two years for the offence punishable under Section 18(b) of the N.D.P.S. Act in respect of recovery of 3.950 kgs. of opium at Barrackpore Railway Station Platform and to suffer fourteen years of rigorous imprisonment and to pay a fine of Rs. 1,50,000/-, in default, to suffer rigorous imprisonment for three years for the offence punishable under Section 18(b) of the N.D.P.S. Act with regard to recovery of 21.500 kgs. of opium from the kitchen of the residential house of the appellant at Kulgachi, Tehatta and to suffer rigorous imprisonment for fourteen years and to pay a fine of Rs. 1,50,000/-, in default, to suffer rigorous imprisonment for three years for the offence punishable under Section 15(c) of the N.D.P.S. Act with regard to recovery of 550 kgs. of poppy husk/straw in the granary attached to the residential house of the appellant, as aforesaid.

Appellant was called upon to answer the following charges:-

“Firstly, that you on 23rd day of August, 2006 at about 15.15hours at Barrackpore Railway Station Platform No. 1, had in your possession 3.950kgs. of Opium in a Nylon Side-bag which was hanging on your right shoulder and on being intercepted by the NCB Officers, on demand, since you failed to produce any valid document for possessing, keeping and transporting the contraband interstate, you violated the provisions of Sec. 8 of the NDPS Act and thereby committed an offence punishable under Section 18(b) of the NDPS Act, and within the cognizance of this Sessions Court.

Secondly, that on 23rd day of August, 2006 at about 22.40 hours in course of follow-up action on the basis of your disclosure, after the said first recovery, a quantum of 21.500 kgs. of Opium could be further recovered from your possession as those were kept in a plastic container at your kitchen in your house at Kulgachi, Tehatta, Nadia, for which you also could not produce any valid document for possessing, keeping and transporting interstate of those quantum opium for which the same was seized by the NCB Officers and thereby committed an offence punishable under Section 18(b) of the N.D.P.S. Act, and within the cognizance of this Sessions Court.

Thirdly that on the aforesaid date, time and place you had in your possession 550 kgs. of Poppy husk or Poppy Straw in your granary which was recovered by the NCB Officers as per your indication and after recovery on demand by the NCB Officers you failed to produce any valid document in support of your such possession of those quantum of Poppy Husk or Poppy Straw for which those Poppy Husk/Straw were also seized by the NCB Officers and for that you violated the provision of Sec. 8 of the NDPS Act and thereby committed an offence punishable under Section 15(c) of the NDPS Act, within the cognizance of this Sessions Court.”

P.Ws. 3 to 7 are members of the raiding party. They were intelligence officers who were attached to NCB EZU, Kolkata. On 23.08.2006 a specific information was received at 13:30 hours which was recorded in writing and communicated to the superior officer. Upon endorsement by the superior, movement order was issued and on the

strength of the movement order the officers left in two vehicles to the Barrackpore Railway Station to work out the information. The team reached the railway station at 15:15 hours. As per information, a person was apprehended at the ticket counter adjacent to platform No. 1 of the railway station. Officers disclosed their identity as NCB Officers. The suspect was carrying a bag on his right shoulder. The team members requested two of the onlookers to join the search as independent witnesses. In front of independent witnesses the suspect was interrogated and he disclosed his identity as appellant. He voluntarily handed over his bag to the officers. Upon searching the bag a polythene packet containing brown blackish sticky substance was recovered. Using the test kit it was found that the substance contained opium. Accordingly, the offending substance was seized and two samples drawn from the seized article were kept in an envelope. The remainder of the seized article was kept in a separate envelope. Weighment was taken and it was found that the article seized is to the tune of 3.950 kgs. A seizure list was prepared and signed by the appellant. Appellant further disclosed, in course of interrogation, that narcotic substance was kept in his house. Accordingly, officers raided the residence of the appellant on the same day at 22:15 hours. In course of raid a white colour plastic container was found. On opening the container blackish brown sticky substance was recovered. By using the test kit it was confirmed that the substance was opium. Weighment was made and it was found that the recovered substance suspected to be opium weighed around 21.5 kgs. Samples were taken from the said seized

item and kept in a separate envelope. Thereafter, search was also undertaken at the granary of the appellant and 93 gunny bags containing poppy husk was recovered. Total weight of poppy husk recovered was 550 kgs. Samples were also taken from the seized poppy husk. Further statements of the appellant were recorded by the intelligence officer. Thereafter, the appellant was arrested.

P.W. 7, Monotosh Sarkar, was the leader of the raiding party. He signed on the seizure list as the seizing officer. He proved source information which was reduced into writing by him and was certified by the Zonal Director, NCB marked as Exhibit-19. He also proved true copy of the movement order which was endorsed by the Assistant Director, NCB, stating P.W. 7, Monotosh Sarkar, intelligence officer, would lead the team. He identified the seized packets as well as the samples produced after chemical examination in court. He also identified the seals of NCB and the Chemical Analyst. He stated that the samples had been sent for chemical examination. He also stated he received the chemical examination report.

P.W. 1, Subhendu Ghosh, is the Chemical Officer attached to Customs House, Kolkata. He received three sample packets along with three test memos for chemical analysis. He held chemical analysis and prepared reports which were marked as Exhibits-1, 2 and 3 respectively. Exhibits-1 and 2 show presence of opium in the tested samples while

Exhibit-3 records the sample comprised of poppy capsules straw containing Morphine.

P.W. 2, Pradip Kumar Ghosh, lodged the complaint before the Court.

Learned Counsel appearing for the appellant challenges the conviction on the ground the independent witnesses have not been examined. He also states there is no compliance of Section 42 of the N.D.P.S. Act. Statements of the appellant recorded under section 67 of the N.D.P.S. Act are inadmissible in law in view of ***Tofan Singh Vs. State of Tamil Nadu***¹ and cannot be used against the appellant. Hence, he is entitled to an order of acquittal.

Mr. Pritam Roy who is empanelled with Narcotic Control Bureau is requested to appear in the matter. He argues P.W. 1 to 7 have proved the prosecution case. Chemical examiner's report shows the recovered items contained opium and poppy straw respectively. Hence, non-examination of independent witnesses does not affect the credibility of the prosecution case.

We have considered the aforesaid submission in the light of the evidence on record.

In view of the law declared in ***Tofan Singh*** (supra), this court has not taken into consideration the statements of the appellant recorded

¹ (2013) 16 SCC 31

under section 67 of the N.D.P.S. Act but has examined the validity of the conviction on the basis of other evidence on record.

P.W. 1 to 7 are members of the raiding party. They unequivocally state on receipt of specific intelligence, the information was duly recorded and intimated to the superior. Upon obtaining endorsement from the zonal director, the team under the leadership of P.W. 7 proceeded to the spot. Movement order endorsed by the assistant director and marked as Exhibit-20 has been produced in court.

In view of the aforesaid material on record, I am of the opinion prior information was duly recorded and communicated to the superior officer before the raiding party left the office for search. Hence, compliance of section 42 (2) of the N.D.P.S. Act has been duly proved. With regard to non-examination of the independent witnesses, I note the evidence of P.W. 1 to 17 is clear, convincing and inspires confidence. Nothing was elucidated during cross-examination which improbabilises the prosecution case. Official witnesses are not inimical of the appellant and no reason for false implication has been remotely suggested. When the evidence of official witnesses are trustworthy and inspire confidence, non examination of independent witnesses would not erode the truthfulness of the prosecution case.

Under such circumstances, I am of the opinion, prosecution case has been proved beyond doubt.

In the light of the aforesaid discussion, I uphold the conviction of the appellant.

Coming to the issue of sentence, I note that the appellant had already served out the substantive sentences imposed on him. In such view of the matter, I modify the default sentences imposed on the appellant and direct in the event appellant has not paid the fine, imposed on him, in default, he shall suffer rigorous imprisonment for six months each on each count.

With the aforesaid modification as to the sentence, appeal is disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)