

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.155 of 2019

Arising Out of PS. Case No.-264 Year-2016 Thana- BIDUPUR District- Vaishali

AJIT KUMAR SINGH Son of Kapil Dev Singh Resident of Rajapakar, Jahingara, P.S.- Rajapakar, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 220 of 2019

Arising Out of PS. Case No.-264 Year-2016 Thana- BIDUPUR District- Vaishali

MD. SABIR SAYEEN Son of Md. Quasim Sayeen Resident of Village - Rajapakar, Jahingara, P.S.- Rajapakar, Distt.- Vaishali.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :
Appearance :

(In CRIMINAL APPEAL (DB) No. 155 of 2019)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Ashok Kumar Mishra, Adv
Ms. Pratibha Srivastava, Adv

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 220 of 2019)

For the Appellant/s : Mr. Vikram Deo Singh, Adv
Mr. Ashok Kumar Mishra, Adv
Ms. Pratibha Srivastava, Adv

For the Respondent/s : Mr.Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 25-04-2023

By the impugned judgment of conviction and order of sentence dated 13.12.2018/19.12.2018 passed by learned Additional Sessions Judge-1st cum Special Judge, Vaishali at Hajipur in connection with Bidupur P.S. Case No. 264 of 2016, the appellants have been convicted and sentenced as under:

Appellant Ajit Kumar Singh (Criminal Appeal (DB) No.155 of 2019)

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) of the NDPS Act	Rigorous imprisonment for 12 years	1 Lakh	S.I for six months
under Section 414 of the IPC	Rigorous Imprisonment for three years		

Md. Sabir Sayeen (Criminal Appeal (DB) No. 220 of 2019)

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) of the NDPS Act	Rigorous imprisonment for 12 years	1 Lakh	S.I for six months
under Section 414 of the IPC	Rigorous Imprisonment for three years		



According to prosecution's case the informant, a Sub Inspector of Police was on a patrolling duty when he received a secret information at about 12:30 pm on 17.09.2016 that a white SCORPIO vehicle bearing registration no. JH 05 AR 3221 carrying huge quantity of ganja was proceeding from Bidupur market to Bidupur. The informant proceeded to intercept the said vehicle based on the said secret information. The vehicle was intercepted near Ram Nandan High School, Bidupur. Once the vehicle was intercepted, several persons present nearby gathered and out of them two persons, namely Suraj Kumar (PW-2) and Randhir Kumar (PW-1) were requested by the informant (PW-3) to become independent witness to the recovery and seizure of the contraband articles. On enquiry, the occupants of the vehicle disclosed their names as Ajit Kumar Singh [appellant in Cr. Appeal (DB) No. 155 of 2019], and Sabir Sayeen [appellant in Cr. Appeal (DB) No. 220 of 2019]. The personal search of the occupants of the said vehicle did not lead to recovery of any incriminating material. The vehicle was subsequently searched, consequent upon which, sacks of *ganja* put beneath the seat of the said vehicle packed in plastic pouches which weighed 10 kilograms were recovered. There were altogether 30 pouches recovered and on weighing, the



weight of *ganja* was found to be 67 kilograms.

A seizure list of recovered items was prepared on which, the seizure list witnesses put their signatures. Twenty Four grams of *ganja* was taken out from the seized pouches for the purpose of sampling. The occupants of the vehicle were made to put their signatures on the said samples.

On a written application of the informant (PW-3) Bidhupur P.S. Case No. 264 of 2016 came to be registered for commission of the offences punishable under sections 8/20(b) (ii)(C) of the NDPS Act and Section 414 of the Indian Penal Code. It is mentioned at this juncture that Section 414 of the I.P.C. was levelled in the First Information Report as the occupants of the vehicle had not produced any paper before the police officials conducting search in support of the vehicle which was seized by the police.

Later, charges were framed against these appellants for the offences punishable under sections 20(b)(ii) (C) of the NDPS Act and Section 414 of the Indian Penal Code. The appellants pleaded innocence and claimed to be tried. Accordingly, they were put on trial.

In order to establish the charges framed against these appellants, the prosecution examined nine witnesses including



the seizure list witnesses namely, Randhir Kumar (PW-1) and Suraj Kumar (PW-2). The I.O. was examined as PW-4. The P.Ws. 5 and 6 happened to be the members of the raiding party. The PW-7 produced the *ganja* which was seized by the police at the trial as a material exhibit. PW-8, at the relevant point of time was working as the Senior Scientific Officer in Forensic Science Laboratory, Original Office, Muzaffarpur who proved the FSL report dated 20.6.2017 over which he had put his signature on 30.6.2017. The said report was marked as exhibit-7. From his evidence, it appears that the sample was tested on 20.6.2017. The result of forensic science examination as proved by PW-8 read as under:

“R.F.S.L. No...821/16.....

**DESCRIPTION OF ARTICLE CONTAINED IN
PARCEL**

One sealed plastic dibba as described earlier contained dried & pressed brown coloured leafy & flowering vegetative substance weighing about 24 gm, said to be ganja like substance, seized from the accused Ajit Kumar Singh and Md. Sabir Sayin.

RESULT OF EXAMINATION

The dried and pressed brownish vegetative substance contained in one plastic dibba as described above was found to be ganja.

Ganja is the flowering and fruiting top of cannabis plant, whose chief intoxicating ingredient is tetrahydrocannabinol (THC).

COUNTERSIGNED

(UMESH KUMAR SINHA)
Director
Regional Forensic Science
Laboratory, Muzaffarpur

(MAJID KHAN)
SENIOR SCIENTIFIC OFFICER
REGIONAL FORENSIC
SCIENCE LABORATORY,
GOVT. OF BIHAR
MUZAFFARPUR”

After closure of the evidence of prosecution



witnesses, the substance of accusation emerging against these appellants were explained by the Trial Court and they were questioned accordingly in accordance with the requirements under section 313 of the Cr.P.C. The appellants, however, denied the same.

The learned trial Court upon analysis of the evidence adduced at the trial held the appellants guilty of the offences punishable under sections 20(b)(ii)(C) of the NDPS Act and Section 414 of the Indian Penal Code.

We have heard Mr. Ashok Kumar Mishra, learned counsel for the appellants and the learned Additional Public Prosecutor for the State in both the cases.

It has been argued on behalf of the appellants that there has been clear breach of mandatory requirements under sections 42, 55 and 57 of the NDPS Act. He has further argued that no independent witness has supported the prosecution's case and even the seizure list witnesses declined to support the prosecution's case at the trial, one of whom (PW-1) has been declared hostile. PW-2, the another seizure list witness has also not supported the prosecution's case has not been declared hostile. He has further submitted that all the witnesses who supported the prosecution's case at the trial were members of the



raiding party. He contends that it is evident from the prosecution's case as disclosed in the FIR that soon after the vehicle was intercepted by the police, several persons had assembled at the place of interception but no independent witness came forward to support the prosecution's case. He has further argued that it is evident from the deposition of the informant (PW-3) that the sample of recovered contraband articles were not prepared at the place of occurrence and the signature of the appellant Sabir does not find place in the seizure list. He has further submitted that there is no documentary evidence on record to prove that soon after the search and seizure was made by the informant the same was communicated to official superior. It is further clear from the evidence of PW-3 that he in fact had neither recorded his reason to believe based on which he had conducted the search nor he had communicated to his immediate official superior regarding search of the alleged contraband items. He has also referred to the evidence of PW-7 who had produced before the Trial Court the contraband articles kept in two sacks. He has submitted that it is evident from the deposition of PW-7 that the materials said to have been recovered from the SCORPIO vehicle were not duly kept at *Malkhana* and there were palpable manipulations.



According to the evidence of PW-7, he had not brought the third sack containing contraband articles as the same was torn and contents of third bag, according to PW-7 was put by him in the rest two bags. According to him, apparently, the *ganja* kept in *Malkhana* were not properly sealed. None of the bags containing *ganja* bore the signature of Officer-in-Charge nor weight was mentioned. He has submitted that the trial Court failed to appreciate that as the alleged contraband articles were not kept in the *Malkhana* of the police station under proper seal and in fact, as the police officials, without following any procedure unsealed the sacks and put the *ganja* from the sack which was in torn condition into other two sacks, the entire genuineness of the material exhibits got compromised. He has further submitted that there has been delay in sending of sample for chemical examination inasmuch as whereas the seizure was made on 17.9.2016, sample was received in the office of Forensic Science Laboratory on 18.10.2016 though it appears from the FSL report (exhibit-7) that the sample was sent on 23.9.2016 through Special Messenger, PSI, Vijay Choudhary (P.W.-4). He has submitted that there is no explanation as to why the sample said to have been dispatched on 23.9.2016 through the Special Messenger was received in the office of Forensic



Science Laboratory on 18.10.2016. He has also argued that the learned Trial Court has not duly followed the statutory requirements prescribed under section 313 of the Cr.P.C inasmuch as he has just put formal question to the appellants for recording their statements under the said provision without explaining the substance of the accusation which was forthcoming at the trial based on deposition of witnesses. He has submitted that the learned trial Court ought not to have relied on any material for recording conviction of these appellants which were not mentioned in the question put by him to these appellants in accordance with the requirements under section 313 of the CrPC.

He in support of his contention has relied upon a Division Bench decision of this Court passed in Criminal Appeal (DB) No. 404 of 2016 (Parshuram Bind & Anr vs the State of Bihar).

Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State per contra has submitted that as one of the seizure list witnesses admitted at the trial that the signature on the seizure memo is of his, it is sufficient to hold that search and seizure were witnessed by him and the document was prepared in his presence. He has placed reliance on the Supreme



Court's decision in the case of *Surender Singh vs the State of Haryana* reported in (2006) 2 SCC (Cri) 444) relied on by a Division Bench of this Court in case of **Ashok Rai vs the State of Bihar** reported in 2010 SCC Online Pat 31. He has also submitted that only on the ground of non-compliance of the requirement of the statutory provisions as contemplated under section 57 of the NDPS Act, finding of conviction cannot be said to be suffering from any legal infirmity.

We consider it apposite to begin with the manner in which the material exhibit was proved at the trial which can be seen from the evidence of P.W.-7. He produced before the trial Court the seized contraband articles in two sacks. It is noteworthy that it is the consistent case of the prosecution that three bags were seized containing *ganja*. In his Examination-in-Chief, P.W.-7 deposed that he had not brought the third bag which was torn and the material kept in the third bag was adjusted in the two bags which were produced at the trial. He also deposed that both the bags which were produced before the trial Court at the trial were under seal and were brought to the Court, in the manner the same were kept in the *Malkhana*. In each of the two bags, four cartons filled with *ganja* were kept. The carton kept in one of the bags produced before the trial



Court came to be marked as M-1, M-2, M-3 and M-4 whereas in the other bag, four cartons came to be marked as M-5, M-6, M-7 and M-8. In his cross-examination, he admitted that the signature of the Officer-in-Charge of the Police Station was not present on either of the packets nor weights were mentioned. There was no seal over any of the packets nor it reflected presence of signature of the accused or the witnesses. He also admitted that most of the packets were torn. He also admitted that *ganja* could spill out of the said packets. He expressed his inability to tell the Court the entry number in the *Malkhana* register regarding taking out from the *Malkhana*, the *ganja* which was produced at the trial. It is evident from the evidence of P.W.-7 that *ganja* was not safely kept in *Malkhana*. He had brought only two bags of *ganja*. The *ganja* kept in the third bag, according to him were put in the said two bags as the third bag was in torn condition. To put it differently, in what manner, the *ganja* in the third bag was transferred in two other bags and in whose presence not at all clear from the evidence of prosecution witnesses. It is peculiar to note that even the two bags which were produced before the trial Court as material exhibits were sealed. The deposition of P.W.-7 indicates that after seizure of the articles, the seized articles were not properly kept and the



evidence is clueless as to how the *ganja* sealed in three bags came to be sealed in two bags subsequently.

In such circumstances, it cannot be said that the prosecution could establish before the trial Court that the material exhibits produced at the trial were the same which were seized consequent upon the recovery as per the case of the prosecution.

In the aforesaid background, the seizure list witnesses becoming hostile, becomes irrelevant.

P.W.-1 in his deposition though proved his signature on the seizure list, he deposed that his signature was obtained at the police station and no *ganja* or SCORPIO was recovered in his presence.

Similarly, P.W.-2, though proved his signature on the seizure list, he deposed that his signature was obtained on a plain paper. Apparently, thus no witness other than official witnesses, who were either party to the raiding team or the investigating officer, proved the case of search and seizure of the said articles.

The FSL report has been proved by P.W.-8 marked as Exhibit-7. From his evidence, it appears that the sample was received in the Forensic Science Laboratory, Regional Office



Muzaffarpur on 18.10.2016, one month after the date of recovery/seizure. There is no explanation for delay in sending the samples for examination. The samples are said to have been sent by a Special Messenger.

There is no evidence as to how, where and in whose custody the samples were kept before the same were received at the Forensic Science Laboratory, Regional Office, Muzaffarpur.

In view of the aforesaid discussion, in our opinion, the appellants deserve to be acquitted on the ground that the materials said to have been recovered from the possession of these appellants were duly kept in *malkhana* and were apparently kept in unsafe condition. Further, the said three bags were handled in a manner which cannot be approved as has emerged from the evidence of P.W.-7. The delay in sending the samples to the Forensic Science Laboratory, Regional Office, Muzaffarpur is another reason we intend to interfere with the conviction recorded by the trial Court. There is no justification appearing from the materials on record as to why the samples were received at the Forensic Science Laboratory, Regional Office, Muzaffarpur, belatedly that too through Special Messenger. We take judicial notice of the fact that Forensic Science Laboratory, Regional Office, Muzaffarpur is hardly 50



kilometers from the police station.

We are accordingly of the view that it is not safe to uphold the convictions of the appellants as recorded by the Trial Court. The appellants deserve to be acquitted on the grounds mentioned hereinabove.

Accordingly, the impugned judgment of conviction dated 13.12.2018 is hereby set aside. Consequently, the order of sentence dated 19.12.2018 is also set aside.

Both these appeals are allowed.

Since the appellants are in custody, let them be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

ranjan/ravi*-

AFR/NAFR	NAFR/AFR
CAV DATE	
Uploading Date	
Transmission Date	

