

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.217 of 2020

Arising Out of PS. Case No.-11 Year-2016 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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1. SAJJAL DAS @ SAJJAL DAS S/o Birendra Das R/o village- House No.- 80, Van Kumari, East Badharghat, P.S.- Aamtali, District- Tripura
 2. Anshuman Chakarovarti S/o Animesh Chakrovarti R/o village- Madhuban Dakli, P.S.- Arundhati Nagar, District- Vishalgadh, Tripura

... .. Appellant/s

Versus

1. The State of Bihar
2. The Economic Offence Unit, Patna Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Anukriti Jaipurkar, Amicus Curiae
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
For the Economic Offence : Mr. Vijay Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-07-2023

This appeal has been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 13.12.2019 and an order of sentence dated 17.12.2019, passed by learned Additional Sessions Judge-XVI, Patna, in Special Case No-65 of 2016, arising out of Economic Offence P.S. Case No. 11 of 2016,



whereby the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 217 of 2020				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sajjal Das	20(b)(ii) (C) of NDPS Act	R.I. for 15 years	1,50,000/-	S.I for 18 months
	25 of NDPS Act	R.I. for 10 years	1,00,000/-	S.I. for one year
	29 of NDPS Act	R.I. for 10 years	1,00,000/-	S.I. for one year
Anshuman Chakrovarti	20(b)(ii) (C) of NDPS Act	R.I. for 15 years	1,50,000/-	S.I for 18 months
	25 of NDPS Act	R.I. for 10 years	1,00,000/-	S.I. for one year
	29 of NDPS Act	R.I. for 10 years	1,00,000/-	S.I. for one year

2. All the sentences have been ordered to run concurrently.

3. The concerned Economic Offences P.S. Case No. 11 of 2016 came to be registered on 06.09.2016, for the offences punishable under Sections 8/20(b)(ii)(C) of the NDPS Act based on a written report dated 06.09.2016 addressed to the Additional Superintendent of Police-cum- S.H.O., Economic Offence Unit, Patna, Bihar by the informant Vinay Kumar(PW-3), an inspector in Economic Offence Unit, Bihar. According to the written report, the informant had got a secret information at about 8:30 am on 06.09.2016 that certain persons engaged in smuggling of *ganja* were transporting *ganja* in a truck from Agartala to Assam and they were likely to unload the *ganja* somewhere at Patna. The secret information so received was transmitted to the superior



officials and an special raiding team was constituted under his leadership consisting of the informant (PW-3), the Sub-Inspector Rajesh Narayan Verma (PW-7), Sub-Inspector Deepak Prakash (PW-2), Sub-Inspector Arvind Kumar Rai (PW-4), constable Vikash Kumar Singh (PW-5), constable Sajid Ali Khan (PW-1) and two drivers of S.A.P. (Special Auxiliary Police), Manoj Pandey (not examined) and Shailendra Singh (not examined). They reached the place nearly 8-10 Kms away from Mahua when they received a definite information that a truck which was though empty but was covered with plastic, and was moving towards Mahua. Based on the said secret information, no sooner did they cross Hajipur-Patna Gandhi Setu, the truck bearing registration no. **NL-01L-0473** was noticed coming towards Patna. The vehicle was intercepted and the driver of the truck, namely, Sajjal Das (Appellant No. 1) and another person sitting in the truck, namely, Anshuman Chakarovarti (Appellant No. 2) were asked to get down from the truck. In the meanwhile, the persons present near the place of inspection gathered, two of whom, namely, Rajiv Kumar Singh (PW- 8) and Mukesh Kumar (not examined) were requested to become witnesses to search and likely seizure after telling them the details of the secret information which the team was having regarding transportation of *ganja*. Personal searches of these



appellants were conducted after disclosing to them the statutory protection under Section 50 of the Act to be searched in the presence of a gazetted officer or the Magistrate. With their consent, personal search of the appellants was conducted leading to recovery of mobile phones, wallet, driving license, ATM Cards, voter ID cards and some cash etc. Upon massive search of the truck, it was detected that 79 packets of *ganja* was concealed in a secret cabin made for concealing articles in the truck. All those packets were marked as P-1 to P-79. The total weight of the *ganja* was found to be 804.600 Kg which was packed in 40 gunny bags. He further alleged that on interrogation the appellants disclosed that on the direction of the truck owner Pranab Das, they were carrying *ganja* from Agartala which was required to unloaded at an appropriate place after contacting a person on mobile phone no. 08651049530. The informant also mentioned in his written report that a contact was made on the said mobile number. A seizure list was prepared which was duly signed by the seizure list witnesses.

4. From the original records of the case, it transpires that after the appellants were arrested, they were forwarded to the learned Chief Judicial Magistrate, Patna on 07.09.2016. The IO filed a petition before the learned Chief Judicial Magistrate, Patna seeking permission for examination of the seized exhibits by FSL,



Patna and Chemical Laboratory, Kolkata. The said application is available on record which came to be marked Exhibit-4 at the trial and reads as under:

“सेवा में,

माननीय जिला एवं सत्र न्यायाधीश,
पटना।

प्रसंग : आर्थिक अपराध थाना कांड सं० 11/16 दि० 6.9.16 धारा
8/120(b)(ii)(c)/25/29 N.D.P.S. Act एवं विशेष कांड सं०

विषय : जप्त प्रदर्श को विधि विज्ञान प्रयोगशाला में जाँच हेतु आदेश
देने के संबंध में ।

महाशय,

उपर्युक्त प्रसंग व विषय के संदर्भ में सादर निवेदन है कि कांड में जप्त प्रदर्श को जाँच हेतु निदेशक विधि विज्ञान प्रयोगशाला, पटना एवं संयुक्त निदेशक, रसायन प्रयोगशाला, कलकत्ता भेजने हेतु अनुमति देने की कृपा की जाए ।

समर्पित

दिलीप कुमार

7.9.16

पु०नि० सह

अनुसंधानक

आर्थिक अपराध थाना,

पटना।”

5. On the said application, the learned Chief Judicial Magistrate, Patna passed following order:

" I allow the above application regarding Economic Offences Case no. 11/16(Spl.65/16), dated 06.09.16 u/s 8/20(b) (ii)(C)/25/29 of the NDPS Act, 1985 under



sub-Section (3) of Section 52A of the Narcotic Drugs and Psychotropic Substance Act, 1985 and hereby, certify the correctness of the enclosed inventory. The enclosed photographs taken and the list of samples drawn and marked- A1, A2 in my presence."

6. The records further show (Exhibit-5) that on 08.09.2016, samples (L-1/1 and L-1/2) were sent for forensic examination to the Director, Forensic Science Laboratory, Bihar. On 22.02.2017 chargesheet was submitted against these appellants for commission of the offences punishable under Sections 8/20(b) (ii)(C), 25 and 29 of the NDPS Act, while keeping further investigation pending. Charges were framed against the appellants for commission of offences punishable under Section 20(b)(ii) (C) read with Section 8 and Sections 25 and 29 of the NDPS Act. The appellants pleaded not guilty and claimed to be tried and accordingly, they were put on trial. At the trial, the prosecution examined altogether 8 witnesses. The IO of the case was examined as PW-6, who was not a member of the raiding team. The seizure list witness Rajiv Kumar Singh was examined as PW-8.

7. We notice at this juncture itself that PW-8, though identified his signature, he did not support the prosecution's case that the seizure was made in his presence. He deposed in his cross-



examination that he was made to put his signature on a paper by the police personnel which he had done. All other prosecution's witnesses were members of the raiding party including the informant, PW-3. In addition to the oral evidence of the prosecution's witnesses, the prosecution got marked at the trial exhibits by way of documentary evidence as under:

Sl. No.	Document	By whom	Exhibit No.
1	Seizure list	Prosecution	1
2	Written Report	Prosecution	2
3	Formal FIR	Prosecution	3
4	Permission letter for FSL	Prosecution	4
5	Forwarding letter for FSL	Prosecution	5
6	Forwarding letter for Chemical Laboratories, Kolkata	Prosecution	5/1
7	Receipt dt. 10.9.2016 for sending FSL	Prosecution	6
8	Receipt at Test Memo dt. 20.09.16	Prosecution	7
9	Charge-sheet	Prosecution	8
10	Signature of witnesses as seizure-list	Prosecution	1/1
11	FSL Report No. 1715/16 dt. 24.11.16	Prosecution	9
12	Certificate Report dt. 28.07.17	Prosecution	10

8. After closure of the evidence of the prosecution's witnesses the appellants were questioned by the trial court under Section 313 of the CrPC so as to give them an opportunity to



explain the circumstances emerging against them from the evidence of the prosecution's witnesses. The questions which were put to the appellants under Section 313 of the CrPC is an important aspect in the present case for ascertaining as to whether there had been due compliance of the requirements under Section 313 of the CrPC and, therefore, they are being reproduced herein-below:-

***Sajjal Das, S/o Birendra Das**

"प्रश्न: क्या आपने साक्षियों का साक्ष्य सुना ?

उत्तर: जी हाँ।

प्रश्न: आपके विरुद्ध साक्ष्य है की दिनांक 06.09.2016 को समय लगभग 04:00 बजे संध्या में ट्रक जिसका रजिस्ट्रेशन नंबर NL-01L-0473 है उसमें 804.600 kg, आठ क्विंटल चार किलो छह सौ ग्राम अवैध गांजा हाजीपुर पटना गाँधी सेतु पुल के पास उक्त ट्रक से बरामद किया गया। आपको क्या कहना है?

उत्तर: जी नहीं।

प्रश्न: सफाई में आपको कुछ कहना है ?

उत्तर: निर्दोष हूँ, सफाई साक्ष्य नहीं देना है। "

***Anshuman Chakrovarti, S/o Animesh Chakrovarti**

"प्रश्न: क्या आपने साक्षियों का साक्ष्य सुना ?

उत्तर: जी हाँ।

प्रश्न: आपके विरुद्ध साक्ष्य है की दिनांक 06.09.2016 को समय लगभग 04:00 बजे संध्या में ट्रक जिसका रजिस्ट्रेशन नंबर NL-01L-0473 है उसमें 804.600 kg, आठ क्विंटल चार किलो छह सौ ग्राम अवैध गांजा हाजीपुर पटना गाँधी सेतु पुल के पास उक्त ट्रक से बरामद किया गया। आपको क्या कहना है?

उत्तर: जी नहीं।

प्रश्न: सफाई में आपको कुछ कहना है ?



उत्तर: जी निर्दोष हूँ।"

9. The defence also produced before the trial court by way of carbon copy of the documentary evidence of the notice which was served upon them in a prescribed form, apparently, to make out a case that the said notices were in Hindi language and these appellants were not able to understand the contents thereof. The prosecution's witnesses, who were members of the raiding party supported the prosecution's case in their depositions.

10. Learned trial court after having noticed the evidence of the prosecution's witnesses particularly, the IO, to the effect that the samples were drawn in the presence of Magistrate and the samples were found to be *ganja* by the Forensic Science Laboratory, held the appellants guilty of the offences punishable under Sections 20(b)(ii) (C), 25 and 29 of the NDPS Act. The trial court has held that the appellants failed to discharge the presumptions under Section 35 and 54 of the NDPS Act consequent upon recovery of materials from their possession which upon forensic examination were found to be *ganja*. After recording conviction, the appellants have been sentenced to imprisonment and fine as noted above.

11. When these appeals were taken up for final hearing, the Court noticed that they were not being represented by any learned counsel and learned counsel who had filed the appeal,



for the reasons not known to the Court, did not appear to address this Court on behalf of the appellants. In order to provide the appellants legal aid, this Court by an order dated 27.06.2023 had appointed Ms. Anukriti Jaipurkar as *amicus curiae* to present the case of the appellants. She has accordingly assisted this Court with all sincerity and perseverance.

12. Various submissions have been advanced on behalf of the appellant by Ms. Anukriti Jaipurkar, learned *amicus curiae*. She has submitted that the entire case of the prosecution stands vitiated as the samples were not drawn after seizure of the alleged contraband articles in the presence of a Magistrate as mandatorily required under Section 52(A)(2)(b) of the NDPS Act read with the Supreme Court's decision in the case of ***Union of India v. Mohanlal***, reported in **(2016) 3 SCC 379**. She has submitted that the view taken by the Supreme Court in the case of **Mohanlal** (supra) has been consistently followed in subsequent decisions on the point of mandatory requirement of drawing of samples in the presence of a Magistrate. She has submitted that in this case, the IO wrongly deposed at the trial in his evidence that the samples were drawn by the court (not before the court) after the same was placed before the court which were sent to Forensic Science Laboratory. The said deposition of the IO is contrary to



the records of the case, she submits. She has also argued that in the present case, the purported compliance of Section 50 of the NDPS Act is unacceptable for the reason that the notices which were given to the appellants were in Hindi language and without ensuring that the appellants were capable of reading Hindi language, they were made to put their signatures. She has further submitted that the prosecution has also not been able to conclusively prove at the trial that the *ganja* was recovered from the conscious possession of these appellants who were driver and co-driver of the vehicle and the *ganja* was seized from a secret cabin designed in the truck itself. She has also argued that in the present case when even the seizure list witness has not supported the prosecution's case and the case of the prosecution is based solely on the evidence of the police officials who were part of the raiding team, it would not be safe for the Court to uphold the conviction. She has submitted that the appellants were not provided legal aid by the trial court at the stage when they remained unrepresented at the time of cross-examination of PW-3 and PW-4.

13. Mr. Vijay Anand, learned Special Public Prosecutor representing the Economic Offence Unit has submitted that it would be evident from the documents exhibited at the trial, more



particularly, Exhibit-10 that the sample was drawn in the presence of the Magistrate and due certification was issued by the learned Additional Chief Judicial Magistrate-3, Civil Court, Patna. He contends that an inventory was prepared pursuant to the request made by the Economic Offence Unit through letter dated 31.07.2017. He has attempted to convince this Court that the samples were drawn in the presence of Magistrate as is evident from the deposition of the Investigating Officer. He has argued that considering huge quantity of *ganja* recovered during the search and the consistent evidence of the prosecution's witnesses, finding of conviction recorded by the trial court does not suffer from any legal infirmity requiring this Court's interference.

14. We have carefully perused the impugned judgment and order of the trial court as well as the lower court's records which are available before us. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties as noted above.

15. It would be in the fitness of the things, in the facts and circumstances of the case to take up first the evidence of the Investigating Officer (PW-6). According to him, he was handed over the charge of investigation on 06.09.2016 and had produced the appellants with the seized materials before the court on



07.09.2016. He also deposed that he had made an application for examination by the Forensic Science Laboratory of the seized articles. In paragraph-6 of his deposition, he stated that the learned District and Sessions Judge prepared two samples from the packets P-1 to P-40 and P-41 to P-79; one was marked as L-1/1 and L-1/2, the other samples were marked as L-2/1 and L-2/2, which were sent to the Forensic Science Laboratory on 08.09.2016. In his cross examination he reiterated that the samples were drawn by the court, whereafter signatures were put on the samples. Further the samples were collected on 07.09.2016. It is also evident from his deposition that the samples returned from the Forensic Science Laboratory were not produced as material exhibits at the trial. It is noteworthy that a submission has been made that no inventory of the articles seized was prepared soon after their seizure. The IO in his deposition expressed complete ignorance about the word inventory and deposed that he had not seen any document bearing the word "Inventory". Further, it is evident from the evidence of the informant (PW-3) that he had not given the requisite information under Section 42 of the NDPS Act to his official superior.

16. We need not deal with all the points which have been raised by Ms. Anukriti Jaipurkar, learned *amicus curiae* in the



present set of facts as it is manifest from the records of the case, which are there before us that the samples which were sent for forensic examination were not drawn in the presence of a Magistrate which is a mandatory requirement under Section 52B(2)(c) of the NDPS Act. Breach of the said requirement vitiates the case of the prosecution.

17. We do not find any application on record made by the Investigating Officer for drawing the samples in the presence of a Magistrate. We have reproduced hereinabove the application which was filed by the Investigating Officer on 07.09.2016 on which the learned Chief Judicial Magistrate had passed an order.

18. There was neither any application for drawing the samples before the Magistrate nor any order passed by the court below for taking out the samples before a Magistrate. Apparently, the Investigating Officer did not depose correctly before the trial court in relation to preparation of samples in the presence of a Magistrate.

19. This coupled with the fact that the seizure list witness has not supported the prosecution's case of seizure of the articles in his presence and all the witnesses are police officials, we do not find it safe to uphold the conviction of the appellants as recorded by the trial court. We hold, on close perusal of the



materials on record, that in the present case there is no evidence on record which can suggest that the samples which were sent to the Forensic Science Laboratory were drawn in the presence of a Magistrate.

20. In such view of the matter, the impugned judgment of conviction dated 13.12.2019 and the order of sentence dated 17.12.2019 passed by learned Additional Sessions Judge-XVI, Patna, in Special Case No. 65 of 2016, arising out of Economic Offences P.S. Case No. 11 of 2016 are hereby set side. This appeal is accordingly allowed.

21. The appellants are in custody. Let them be released from jail forthwith, if not required in any other case.

22. Before we part with the present judgment, we record our deep appreciation for the able assistance extended to this Court by Ms. Anukriti Jaipurkar, learned *amicus curiae* who has selflessly assisted this Court with full responsibility and sincerity. We direct the Patna High Court Legal Services Committee to pay to her a sum of Rs. 15,000/- as token amount for the assistance extended by her to this Court.



(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Suraj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2023
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