

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.403 of 2021**

Arising Out of PS. Case No.-91 Year-2018 Thana- SONPUR RAIL P.S. District- Saran

PRAKASH CHAUDHARY Son of Late Ramprit Chaudhary Resident of
Village - Gopalpur, Police Station- Bidupur, District - Vaishali.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kedar Jha, Adv
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 07-07-2023

Heard learned counsel for the appellant and learned
APP for the State.

2. The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 22.03.2021 and order of sentence dated 24.03.2021 passed by the learned 1st Additional Sessions Judge, Saran at Chapra in NDPS Case No. 14 of 2018 (CIS Registration No. 14 of 2018) arising out of Rail P.S. Case No. 91 of 2018, whereby and whereunder the appellant has been convicted and sentenced as under :-



Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 20(b)(ii)(C) of the NDPS Act	Rigorous Imprisonment for 13 years	Rs. 1,50,000/-	SI for three years

3. An Assistant Sub-inspector of Railway Protection Force, Sonapur, Ramashish Singh (PW-5) is the informant on whose written report addressed to the officer-in-charge, Government Rail Police, Sonapur, Sonapur Rail P.S. Case No. 91 of 2018 came to be registered on 27.07.2018, in relation to an occurrence which had taken place on 26.07.2018. He disclosed in his written report that after getting a tip-off on 26.07.2018, to the effect that a consignment of *Ganja* was being carried in Purabiya Express train, he reached the Sonapur Railway Station and when the train stopped at Sonapur Railway Station, based on the secret information, three accused persons namely Urmila Devi, Prakash Chaudhary (appellant) and Shambhu Prasad were brought out of the train. They showed their railway tickets and upon search of their bags 38 kgs of *Ganja* was recovered wrapped in a black polythene packet which was seized and the seizure list was prepared at the spot.



The seized *Ganja* and said three accused persons were brought to the CIB office (Crime Intelligence Branch of RPF) at platform No. 2 of the Railway Station, where they were arrested and their personal search was conducted. All the three persons were named in the FIR. Upon completion of investigation, the Investigating Officer (PW-6) submitted chargesheet against all the accused persons for the offences punishable under the various provisions of the N.D.P.S Act, whereupon cognizance was taken on 10.09.2018, for the offences punishable under Section 20(b)(ii)(C) of the N.D.P.S Act ('Act' in short). Subsequently, charges were framed for commission of the offence punishable under Section 20(b)(ii)(C) of the Act against all the accused persons named in the FIR. The persons put on trial denied the charge and claimed to be tried.

4. At the trial, the prosecution examined altogether six witnesses, all police personnel of RPF. The prosecution also brought on the record the following documentary evidence:-

“Ext.1-Signature of Munna Kumar Singh on the seizure list.

Ext. 1/1-Signature of Virendra Kumar on the seizure list.

Ext. 1/2 - Signature of Umesh Kumar Singh on the seizure list.

Ext.2- Inventory cum seizure list

Ext. 2/1- Inventory of physical search of accused Urmila Devi.

Ext.2/2- Inventory of physical search of accused Prakash Chaudhary.



Ext. 2/3- Inventory of physical search of accused
Shambhu Prasad

Ext.2/4-Production cum seizure list

Ext.3- Self written application of Ramashish Singh

Ext.3/1- Endorsement on self written application

Ext.4- F.S.L.report.”

5. The prosecution also brought on record material exhibits, marked as exhibits (I-VI). From the records, it transpires that upon closure of the prosecution's evidence, two accused persons namely Urmila Devi and Shambhu Prasad did not appear for their examination under Section 313 of the Cr.P.C. The appellant was thus the only accused facing trial who was questioned by the trial court under section 313 of the Cr.P.C. He negatively answered the questions put to him. The trial court after having appreciated the evidence adduced at the trial has held the appellant guilty of the offence punishable under Section 20(b)(ii)(C) of the Act and has sentenced him to undergo rigorous imprisonment for 13 years with fine, as has been noted at the outset.

6. Learned counsel appearing on behalf of the appellant has submitted that despite the fact that the seizure, according to prosecution's case, was made at a public place, no independent person witnessed the seizure of the articles. He has also submitted that there has been no compliance of the mandatory requirement under Section 52A of the Act, inasmuch as, the



sample said to have been sent to the Forensic Science Laboratory was not drawn in the presence of the Magistrate. It is his submission that though according to prosecution's case, 38 kg of *Ganja* was recovered out of which minimal amount was taken for sample being sent to Forensic Science Laboratory, the remaining *Ganja* was not produced as material exhibit at the trial, as can be seen from the evidence of PW-4, Sri Ram Singh, Assistant Sub-Inspector of Rail Police Station Sonapur.

7. There were five material exhibits produced at the trial including a trolley bag on which '8 kg of *Ganja*' was marked; Another trolley bag was marked as No. 3. Though, some *Ganja* was present in polythene bag in the trolley bag (M3), no quantity of *Ganja* was produced before the trial court in the said bag as had been marked over the bag. Similar is the case with the back pack which was recovered from the accused persons (Exhibit-3) which does not mention the quantity of ganja present in the bag. Exhibit-4, another handbag also did not disclose the quantity of ganja. On Exhibit-5, a handbag, 8 kg *Ganja* was written. Similarly, in the third handbag 8 kg *Ganja* was written. On all the bags though the case number was written, the bags did not contain signature of any authorized officer certifying that the same was recovered in connection



with Sonapur Rail P.S. Case No. 91 of 2018. He contends that the apparent disparity in the quantity of *Ganja* said to have been recovered and that produced before the trial court as material exhibit renders the entire case of the prosecution vulnerable.

8. Argument has also been made that there is no evidence to prove that after seizure of *Ganja*, the same was kept in safe custody before the same was produced before the trial court. Further, the sample sent to the Forensic Science Laboratory was not produced at the trial as a material exhibit. It has also been argued that there is no compliance of the requirement envisaged under Section 42(2) of the Act in, as much as, the informant failed to send a copy of the secret information said to have been received by him which formed the ground for his belief that contraband article was being carried by the accused persons, to his official superior. He has also submitted that despite seizure said to have been made from the public place that is a Railway Station, it does not appear from the prosecution's case that any attempt was made to prepare seizure list in presence of independent seizure witnesses.

9. Learned counsel for the appellant has placed reliance on following Supreme Courts decisions in support of his argument:-



- (i) *Union of India Vs. Bal Mukund & Ors*
reported in *(2009) 12 SCC 161*
- (ii) *Abdul Rashid Ibrahim Mansuri Vs State of Gujarat* reported in *(2000) 2 SCC 513*
- (iii) *State of Rajasthan Vs. Shanti* reported in *(2009) 12 SCC 400*
- (iv) *Koluttumottil Razak Vs State of Kerala*
reported in *(2000) 4 SCC 465*

10. Learned APP representing the State while defending the judgment of conviction has submitted that soon after the seizure of contraband articles, the same were produced before the learned Special Court in whose presence, the samples were drawn which were sent for forensic examination without any further loss of time. He contends that there has been absolutely no delay in transmitting the sample for chemical examination to the Forensic Science Laboratory. He has also submitted that the RPF personnel are not police officers and therefore the confession made by the appellant before them cannot be said to be barred by operation of Section 27 of the Evidence Act. He has submitted that after arrest of the appellant and other accused



persons they had admitted their guilt in their confessional statement which was recorded by RPF personnel which gave rise to the presumption under Section 54 of the NDPS Act. He submits that there is no legal infirmity in the impugned judgment of conviction as the appellant failed to justify the circumstances in which the illicit contraband *Ganja* was recovered from his possession.

11. We have perused the impugned judgment of conviction recorded by the trial court as well as the lower court's records and have given our thoughtful consideration to the rival submission advanced on behalf of the parties.

12. From the materials on record, it is manifest that the alleged seizure was made by RPF personnel from the possession of the appellant and two other accused persons at the Sonepur Railway Station which is a public place. It is not the case of the prosecution that no person present on the platform at the time of occurrence was requested to become seizure list witness before conducting search and seizure. The seizure list bears the signature of two persons namely Mithilesh Yadav and Pramod Kumar as the seizure list witnesses. None of them were examined at the trial and there is no explanation on record as to why they were not examined. It is evident from the deposition



of the witnesses that both the seizure list witnesses were members of the team which had caused the seizure and were members of CIB team (Crime Intelligence Branch of RPF). PW-5, the informant deposed at the trial *inter alia* that he did not remember as to from which accused which bag was recovered. We further find force in submission made on behalf of the appellant that the gap between the contraband said to have been seized and the same produced at material exhibits at the trial has not been explained. This fact casts a doubt over the manner in which the seized contraband articles were stored without maintaining safety and security of the contraband. We are also of the view that there is no due compliance of the requirement under section 42 of the Act, inasmuch, as there is nothing on record to show that the secret information which the informant had received was taken down in writing and the same was sent to his immediate official superior.

13. We are further of the view that the confessional statement said to have been made by the accused persons including this appellant before the RPF personnel who had conducted the search and seizure could not be used as evidence against them in the light of the Supreme Court's decision in case of *Tofan singh Vs. State of Tamil Nadu* reported in (2021) 4



SCC 1.

14. On cumulative analysis of the evidence adduced at the trial, we are of the view that non-examination of seizure list witnesses, absence of any witness or seizure of the articles, non compliance of the requirement under Section 42(2) Act renders the finding of conviction vulnerable. We in the facts and circumstances of the case, do not find it safe to uphold the impugned finding of conviction recorded by trial court. It has been clearly held in the case of Tofan Singh (supra) that the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial for the offences punishable under the Act.

15. Accordingly, the impugned judgment of conviction dated 22.03.2021 and order of sentence dated 24.03.2021 passed by the learned 1st Additional Sessions Judge, Saran at Chapra in NDPS Case No. 14 of 2018 (CIS Registration No. 14 of 2018) arising out of Rail P.S. Case No. 91 of 2018, are hereby set aside. Consequently, the appellant is acquitted of the charge for the commission of the offence punishable under Section 20(b)ii)(C) of the NDPS Act.

16. This appeal is allowed.

17. The appellant is in custody. Let him be released



from the jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

ranjan/sudha-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	NA
Transmission Date	19.07.2023

