

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36692 of 2015

Arising Out of PS. Case No.-1 Year-2013 Thana- GOVERNMENT OFFICIAL COMP.
District- Vaishali

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The Union Of India Through The Superintendent, Narcotics Control Bureau,
Patna Zonal Unit, Ministry

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jasavindar Singh, Son of Late Harbans Singh, Resident of 288/104,
Village- Arya Nagar, Tehsil- Lucknow, District- Lucknow, Uttar Pradesh.
3. Ajay Kumar Gupta son of late Akhila Nand Prasad, resident of flat No:-
402, Vidya Niwas, Road No- 11 (F), Rajendra Nagar, Patna- 6, P.S- Kadam
Kuan, District- Patna,
4. Sanjay Kumar son of Sri Devendra Prasad, resident of S.N. Road,
Salempur, Chhapra, P.S.- Town Chhapra, District- Saran

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Sinha, C.G.C.
For the Opposite Party/s	:	Mr.Jitendra Kumar, APP
For the respondent	:	Mr.Basant Kumar Singh, Adv. Mr.Vishesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 27-03-2023 Let the name of the learned APP who has since

elevated to the Bench be deleted from the cause list.

Heard Mr. Rakesh Kumar Sinha, learned counsel for
the petitioner and the learned APP as also Mr. Basant Kumar
Singh duly assisted by Mr. Vishesh Kumar Singh who
representing the other side.

This is an application for quashing of the order dated
15.06.2015, passed by the Court of learned Ist Additional
Session Judge-cum-Special Judge under NDPS Act, 1985,



Vaishali at Hajipur in NCB/NDPS Case No. C2A1/2013 (Union of India Vs Jasavidner Singh & Ors.) by which the learned court was pleased to reject the petition dated 12.05.2015 filed in the said case without appreciating the seriousness of crime committed and the law involved in it.

The prosecution story read as follows :

(i) on information of illegal transportation of medicine from the Parcel Office of Hajipur Railway Station, the sleuths of Narcotics Control Bureau (NCB) went to the Hajipur Railway Station and investigated the parcel booked by the accused and took custody of the same in accordance with law;

(ii) the Officers of the NCB then opened the dubious parcel and found 21600 amples of Fortwin injection manufactured by Ranbaxy Laboratories, each containing 30 mg of substance believed to be Pentazocine without any valid documents.

(iii) the said medicine is a drug and transportation of same without any valid documents and in clandestine manner proves that the same was being used in illegal manner with illegal purpose which is a cognizable offence under NDPS Act, 1985.

(iv) therefore the whole consignment having a value



of Rs. 109944/- was seized in accordance with law and the accused was apprehended.

Earlier on 13.3.2023, the matter was adjourned allowing Mr. Rakesh Kumar Sinha, learned counsel for the petitioner to file supplementary affidavit. However, the same has not been brought on record.

It seems that during the pendency of the case, the opposite parties herein were convicted under Section 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (henceforth for short 'the NDPS Act') and were sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 1 lakh and in default to undergo rigorous imprisonment for two years for the offences punishable under Section 22 (C) and 29 of 'the NDPS Act' by the judgment and order dated 2.8.2016 passed by the learned Additional Sessions Judge, 1st, Vaishali at Hajipur in C2A01 of 2013.

Subsequently, they preferred Cr. Appeal (SJ) No. 751 of 2016 along with Cr. Appeal (SJ) No. 647 of 2016 and Cr. Appeal (SJ) No. 807 of 2016 which was taken up on 17.5.2018 and the learned coordinate bench came to the conclusion so far as accuseds Jasavindar Singh and Ajay Kumar Gupta (O.P. Nos. 2 and 3) are concerned, it was observed in para-36 as follows :



“36. From the records as well as the deposition of the witnesses, it further gets established that appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) had purchased the consignment of the psychotropic substance from appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016). This is evident from the fact that appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) had obtained fortwin injection from appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) on the asking of appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016). The evidence of the witnesses further revealed that appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016) was known to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) as they were on trading terms from before. Merely because wrong residential address of appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) was given by appellant/Jasvindar Singh @ Kooki (Cr. Appeal No. 807/2016), that by itself would not discredit the prosecution version. It stands established that the seized drugs were obtained by appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) from appellant/Sanjay Kumar (Cr. Appeal No. 647/2016). Since there was trading



relationship between appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016), appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) ought to have known whether appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) had the requisite license to be sold scheduled drugs. By selling the aforesaid drugs to a non-license holder, appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) has made himself liable again for being convicted and sentenced under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.”

So far as the Opposite Party No. 4, namely, Sanjay Kumar who had preferred Cr. Appeal (SJ) No. 647 of 2016, the learned coordinate bench observed in para-38 which again is reproduced in the present order :

“38. As far as appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is concerned, there is no doubt that his wife has a valid license for dealing in such drugs and he has sold/conveyed the aforesaid drugs to appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) whom he knew to be a license holder and who is in fact a license



holder. There is nothing on record to infer that appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) knew that such consignment would be sold to an unauthorized person. There is no reference of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) in the statement of appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016)”.

Accordingly, the coordinate bench disposed of the matter with following order which starts from para-42 and ends at para-45 and are again reproduced :

“42. Thus, the conviction of appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) under Section 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 is set aside.

43. The conviction and sentence of the appellant/Ajay Kumar Gupta (Cr. Appeal No. 751/2016) and appellant/Jasvinder Singh @ Kooki (Cr. Appeal No. 807/2016) are affirmed and upheld.

44. The appellant/Sanjay Kumar (Cr. Appeal No. 647/2016) is on bail. He is discharged of his liabilities of bail bonds.

45. The appeals are disposed of accordingly.”

From the order as incorporated hereinabove, it is clear that not only the matter was disposed of at the Trial Court, it



also has now crossed this Patna High Court and now that the aggrieved parties are before the Hon'ble Supreme Court.

Taking into account all the aforesaid facts, this Court is convinced that the present petition has become infructuous.

Accordingly, the same stands disposed of.

(Rajiv Roy, J)

Ajay Singh/-

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